



OFFICE OF THE POLICE COMMISSIONER

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July 24, 2012

Memorandum for:

Deputy Commissioner Trials

CHAN

Re:

Police Officer Anthony Minoia

Tax Registry No. 930743

Military and Extended Leave Desk

Disciplinary Case No. 86092/10

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on January 3, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 86092/10

1. Said Police Officer Anthony Minoia, while on-duty and assigned to the 42nd Precinct, on or about January 11, 2010, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did engage in a physical altercation with New York City Police Department Deputy Inspector Timothy Bugge, Tax No. 893880.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT- PROHIBITED CONDUCT GENERAL REGULATIONS

2. Said Police Officer Anthony Minoia, while on-duty and assigned to the 42nd Precinct, on or about January 11, 2010, after having been directed by New York City Police Department Deputy Inspector Timothy Bugge, Tax No. 893880, to surrender his firearm, did fail and neglect to comply with said directive.

P.G. 203-03, Page 1, Paragraph 2

COMPLIANCE WITH ORDERS GENERAL REGULATIONS

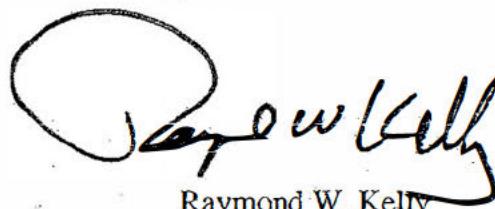
3. Said Police Officer Anthony Minoia, while on-duty and assigned to the 42nd Precinct, on or about January 11, 2010, was discourteous to on-duty New York City Police Department Lieutenant Mark Sedran, Tax No. 892061, to wit: after Lieutenant Sedran approached said Police Officer to address the fact that he was observed exiting the EMS station located on Boston Road and East 169th Street, Bronx County, said Police Officer did become belligerent, argumentative and insult said Lieutenant.

P.G. 203-09, Page 1, Paragraph 2

PUBLIC CONTACT-GENERAL GENERAL REGULATIONS

In a Memorandum dated June 4, 2012, Assistant Deputy Commissioner Claudia Daniels-DePeyster found the Respondent NOT GUILTY of Specification Nos. 1 and 2, and GUILTY of Specification No. 3 in Disciplinary Case No. 86092/10. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The Respondent's actions were inappropriate within the structure of a paramilitary organization and members of the service must always address ranking officers with respect and courtesy. As such, a more severe penalty than what was recommended after trial is merited. Therefore, the Respondent shall forfeit thirty (30) vacation days and be placed on one-year dismissal probation.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

June 4, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Anthony Minoia
Tax Registry No. 930743
Military and Extended Leave Desk
Disciplinary Case No. 86092/10

The above-named member of the Department appeared before me on August 9, 2011, August 25, 2011, October 11, 2011, November 15, 2011, December 20, 2011, and January 3, 2012, charged with the following:

1. Said Police Officer Anthony Minoia, while on-duty and assigned to the 42nd Precinct, on or about January 11, 2010, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did engage in a physical altercation with New York City Police Department Deputy Inspector Timothy Bugge, Tax No. 893880.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT GENERAL REGULATIONS

2. Said Police Officer Anthony Minoia, while on-duty and assigned to the 42nd Precinct, on or about January 11, 2010, after having been directed by New York City Police Department Deputy Inspector Timothy Bugge, Tax No. 893880, to surrender his firearm, did fail and neglect to comply with said directive.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS GENERAL REGULATIONS

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P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL GENERAL REGULATIONS

COURTESY • PROFESSIONALISM • RESPECT

The Department was represented by Rudolph Behrmann and Jamie Moran, Esqs., Department Advocate's Office, and Respondent was represented by Eric Sanders, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification Nos. 1 & 2 and Guilty of Specification No. 3.

SUMMARY OF EVIDENCE PRESENTED

Introduction

On January 11, 2010, a very cold day, Respondent, assigned to the 42 Precinct, was assigned to a fixed post at "████████," located at 169 Street and Clinton Avenue in the Bronx. The post was a high crime area. At 11:17 a.m., Respondent's Platoon Commander, Lieutenant Mark Sedran, driving a radio motor patrol car (RMP), visited Respondent in the vicinity of Post 5. Later in the day, Respondent reported to the office of his Commanding Officer, Inspector Timothy Bugge, and he was informed that he was being reassigned to the midnight tour. After leaving Bugge's office, as he was going up the stationhouse stairs, Respondent fell down the stairs. Bugge went to the scene of the fall and there was interaction between Bugge and Respondent.

The stairs (depicted in photo, Department's Exhibit 1) are beside the telephone switchboard (TS) and ascends along the wall behind the TS and desk. When facing the

42 Precinct desk, the TS is beside the desk, on the left. To the right of the desk are the complaint room and Bugge's office.

Stipulation

Respondent's assignments during the six months leading to January 11, 2010, specifically July 2009 through January 2010, were stipulated to, based on Respondent's monthly performance activity reports.

In August 2009, Respondent was on vacation for the majority of the month. He worked eight days, four of which were at a fixed post and three of which were training days. In September 2009, Respondent worked 23 days, four of which were at a fixed post. In October, November and December 2009, Respondent had 20 work days each month, and spent seven, ten and eight days, respectively, at a fixed post.

In January 2010, before Respondent was suspended on January 11, he worked eight days, five of which were at a fixed post. Specifically, on January 1, Respondent was on a foot post; on January 5, he was at the range; and on January 10 he was assigned to the Critical Response Vehicle Surge detail (CRV). The remaining days, January 2, 3, 4, 9 and 11, he was assigned to Post 5.

The Department's Case

The Department called Lieutenant Mark Sedran, Inspector Timothy Bugge, Lieutenant Thomas Devine, Sergeants Larry Lopez and Cynthia Rodriguez as witnesses.

Lieutenant Mark Sedran

Sedran, a 24-year member of the Department, has been assigned to the 42 Precinct for 12 years. On January 11, 2010, at 11:17 a.m., Sedran visited Post 5 to sign Respondent's Activity Log but after he "went up and down the post," he was unable to locate Respondent. He expected to see Respondent somewhere on 169 Street between Clinton and Franklin Avenues. After calling the Desk Officer, Sergeant Cynthia Rodriguez, Sedran learned that Respondent had taken a personal [break] at 10:40 a.m. According to Sedran, officers are allowed two 20-minute personals during a tour. Respondent was approximately ten minutes over his allotted time. Sedran called for Respondent on the police radio, a transmission that Respondent acknowledged.

While waiting for Respondent at Post 5, Sedran observed Respondent leaving the Emergency Medical Service (EMS) station across the street on Boston Road, just south of 169 Street, a short city block from Post 5. Respondent walked over to Sedran's location at McKinley Square and Sedran exited the RMP. Sedran advised Respondent that he had gone over his allotted personal time and discussed his poor performance and poor activity. Sedran told Respondent that if he wanted to, he could "change his ways" to get off the foot post. Respondent then became "very agitated and very belligerent." Respondent told Sedran that he was a "poor" and "horrible" supervisor, and that "he didn't care about this foot post, he'd stay on this foot post forever. He said he would continue just to do the minimum, but he said his activity was good." Sedran reminded Respondent that he had no arrests, summonses, or verticals [patrols inside of buildings] on his last activity report and this was the second time he had taken an extended personal.

Sedran suggested that Respondent work on another platoon, maybe the midnights, where he can work for a different supervisor. Respondent "smirked" and said, "is that the best you can do." Sedran then told him he did not want to continue the conversation, walked back to his RMP and sat in the driver seat. Respondent followed Sedran to his RMP, placed his hands on the window sill, "stuck his head in the car and continued going on and on in an agitated belligerent manner." After asking Respondent to step away from the RMP twice, Sedran finally ordered Respondent, and Respondent complied. After the incident with Respondent, Sedran went back to the command and spoke with Bugge, who instructed Sedran to issue Respondent a Command Discipline (CD).

Sedran later observed Respondent in the station house, at the bottom of the stairs with Police Officer Frank Palestro, the Patrolmen's Benevolent Association (PBA) delegate standing beside him. He asked Respondent what happened, but got no response. Palestro told Sedran that Respondent fell down the stairs. Sedran went to report this incident to Bugge, but Bugge was not in his office, so Sedran reported it to Captain Nilda Hofmann instead. Shortly thereafter, Bugge returned to his office, upset, and said, "I can't believe [Respondent] grabbed me...he grabbed me by the neck." Sedran noticed that the area around Bugge's collar was visibly red.

During cross-examination, Sedran said he observed Respondent sitting at the bottom of the steps with his eyes open, but did not know whether Respondent was conscious or not. Instead of staying with Respondent and conducting an investigation, Sedran went to report the incident to Bugge. He explained that Respondent had a member of the service standing by him already, he had no visible injuries and he did not appear to need any medical assistance from Sedran while awaiting the arrival of an

ambulance. Sedran conducted the investigation after Respondent was removed to the hospital and upon Respondent's return from the hospital.

It appeared to Sedran that Respondent had staged the incident so that he would not have to come into work. Respondent had just learned that he was transferred to the midnight tour. Sedran then clarified that "[I]t was a consideration" that Respondent may have staged his fall. His current testimony was the first time Sedran shared this consideration, as he was never previously asked. Sedran neither told any Department investigator, nor did he tell Bugge or Hofmann that Respondent may have staged the fall.

Sedran said Hofmann was already aware that Respondent fell down the stairs when he saw her in Bugge's office. He did not know if she went out to check on Respondent. Sedran did not witness what actually took place between Respondent and Bugge, but only saw a red mark on Bugge's neck when Bugge returned to his office three or four minutes later. He saw the Emergency Medical Service (EMS) personnel take Respondent away, but he did not ascertain from EMS if Respondent had been injured.

Sedran said he issued a CD to Respondent for taking an extended personal and courtesy. He did not believe there was any conversation involving himself, Bugge or Palestro concerning whether or not Respondent could be charged with taking an extended personal. "There's no doubt he could be charged." Bugge never told him that after a discussion with the Office of Labor Relations, he (Bugge) was told there was no such thing as an extended personal. Sedran believed the personal timeframe was contractual, but he has never read the PBA contract.

Sedran denied that [REDACTED] was considered a punishment post; "[I]t's considered a post that must be manned." It could either be a solo- or two-person post. He

acknowledged that Respondent had probably been assigned Post 5 more than 20 times. He said that Respondent had "poor" summons and arrest activity as it was less than what other officers were doing. Sedran did not conduct an analysis on whether Respondent had any impact on the crime at [REDACTED] while Respondent was assigned there.

Sedran acknowledged that he drove up and down Post 5 but could not find Respondent, so he called the precinct to see whether Respondent was on meal or on a personal prior to calling for him on the radio. He said Respondent was upset, but did not say why. Respondent was belligerent in that he was "combative," however, Respondent was not yelling. "[H]e was very agitated and discourteous." Sedran said, "Calling me a heartless supervisor and smirking at me and telling me, is that the best you can do, I would say that that's discourteous." Sedran thought they "could have an open conversation and it didn't take that route."

Additionally, in a prior conversation about Respondent's evaluation, Respondent had told Sedran that he was "going to do the bare minimum." Sedran had previously spoken to Rodriguez and Bugge about Respondent's activity but he was not privy to any discussions involving Respondent and Rodriguez or Bugge.

Sedran suggested that Respondent work for a different supervisor, perhaps on the midnight tour not because the midnight tour was a punishment, but because Respondent had previously worked the midnight tour and maybe he wanted to resume working for a prior supervisor. After the Respondent became "belligerent" and "discourteous," Sedran no longer wished to continue the conversation and went back to his RMP and got in. Respondent continued to repeat the same things while at the RMP and Sedran had to tell

him to step away. Sedran was in the driver seat and Police Officer Vivian Plata-Martin was in the passenger seat.

During redirect examination, Sedran said the conversation that occurred with Respondent while he was in the RMP lasted approximately one or two minutes and took place at the driver side window. He said that Respondent had no activity while he was assigned to Post 5.

Sedran said his encounter with Respondent was "frightening" and that Respondent had "a scary look in his eye." Sedran was "shaken up" after their exchange and even thought that Respondent, being "so angered" and "agitated," might shoot him.

During recross-examination, Sedran agreed that he had not mentioned that Respondent was exhibiting "scary" behavior before redirect examination, and did not feel he added a gratuitous statement because Respondent did have a scary look. Even though the thought of Respondent shooting him entered his mind, Sedran did not tell anyone in the precinct and did nothing about it.

On further redirect examination, Sedran clarified that he does not verbalize every thought that enters his mind.

Inspector Timothy Bugge

Bugge, a 23-year member of the Department, was the Commanding Officer of the 42 Precinct at the time of the incident. Bugge testified that after Sedran told him about his interaction with Respondent, Bugge decided to change Respondent's tour of duty to the midnight platoon. Bugge called Respondent to his office and explained that due to his courtesy to Sedran and other issues he has had, he was being transferred to the

midnight platoon where Respondent would have a fresh start with a new supervisor. Bugge then dismissed him and told Respondent to return to his foot post. Present in the office was Bugge, the Integrity Control Officer (ICO), Lieutenant Thomas Devine, Hofmann, Palestro and Respondent.

Bugge felt that Respondent was not making any headway in getting along with his supervisors, and Bugge tried talking with Respondent, but it did not work. Bugge also placed Respondent on performance monitoring. Bugge wanted Respondent to “[j]ust come to work to work, meaning [n]ot having a negative attitude, not wanting to listen to his supervisors when they assign him to different details.”

A few minutes after Respondent left his office, Bugge learned that Respondent fell down the stairs. Bugge said his office is approximately 50 feet from the stairs and he did not see or hear the fall. Bugge made his way towards the stairs and noticed Respondent sitting on the first or second step. He was informed that an ambulance was on its way. Palestro was standing near Respondent and there were one or two officers standing nearby. No one was attending to Respondent. Bugge asked what was going on and Respondent said he fell down and his head hurt.

Bugge approached Devine's office, located beyond the stairs, just as Devine emerged. They went back to Respondent's location, whereupon Bugge asked Respondent why he was going upstairs, as he was directed by Bugge to return to his post.

~~Bugge did not expect to find Respondent still in the command after that directive.~~

Respondent said, “I am going to midnights, I have to go to my locker, I want to talk to my delegate...” Respondent added, “[M]y head hurts, I feel dizzy.” Respondent then placed his hand on his head and leaned over and leaned back.

Noticing Respondent's condition, Bugge said to Devine, "[H]ey Tommy, I want to take his firearm," then to Respondent, he said, "Tony, give me your firearm." Respondent did nothing and just stared at him as Bugge repeated, "Tony I want your firearm, give me your firearm." When Respondent did not comply, Bugge, thinking Respondent was right-handed, reached towards the right side of Respondent's body only to learn his firearm was not there because Respondent is left-handed. As Bugge reached towards the left side of Respondent's body, Respondent jumped up and grabbed Bugge around his collar with both hands.

Bugge testified that he wanted to take Respondent's firearm because Respondent could not go to the hospital with his firearm. Bugge also stated, "I didn't think it would be in the best interest to anybody, if a person was dizzy at that point, to have a firearm in the precinct." Bugge added that he was going to return Respondent's firearm when Respondent returned from the hospital.

Bugge said Respondent grabbed him by the collar and was pushing him back because he (Respondent) was standing in front of Bugge. Devine and Police Officer Christopher Multari intervened, with Multari grabbing Bugge from behind, in a bear hug and pulling him away. Four or five other officers pushed Respondent, who was screaming at him (Bugge) and they pushed him back toward the muster room. Bugge said that Respondent was yelling, "[G]et your hands off me, don't you touch me." Bugge said he was in disbelief and shocked by the incident. He said he neither hit Respondent nor provoked him in any way.

Bugge testified that he had asked Respondent directly at least twice to give him his firearm. He assumed, based on their prior conversation, that Respondent heard him

and had no reason to believe that Respondent did not or could not hear him at that time.

Eventually, Sergeant Larry Lopez, as per Bugge's direction, secured Respondent's firearm. Afterwards, Respondent was taken to the hospital and Bugge reported the incident to his superiors.

During cross-examination, Bugge believed that Respondent appealed his evaluation and filed a grievance against his immediate supervisor. He did not know if he was named as the commanding officer in the grievance. He had a conversation with Respondent's immediate supervisor about the grievance prior to the January 11, 2010 incident. Bugge also spoke with Respondent about how he felt he was being treated and how he felt supervisors were treating him differently. Bugge denied that they had conversed about supervisors imposing "illegal" activity requirements on him or about him being discriminated against.

Bugge said that on the day of the incident, while Sedran did tell him that Respondent was insubordinate to him, Sedran did not tell him anything about Respondent having a crazed look in his eye or looking unstable, or that he [Sedran] was afraid that Respondent might shoot up the precinct. Sedran did not mention that Respondent could be a danger to himself or to anyone on the streets. Bugge did not believe that Respondent was acting in a "crazed" manner when Bugge called Respondent to his office at 2:15 p.m. At that time, Bugge told Respondent that he had problems with day tour supervisors, so it was best for him to get a fresh start in a different platoon. ~~He acknowledged that he~~ might have told Respondent that he has the "second worst activity in the command."

Bugge agreed that just because a police officer is not generating summons activity, it does not mean that he is not performing his duties as a police officer. He

agreed that one of the methods to suppress crime is by mere presence or omnipresence. Bugge said he did not analyze the crime rate at the location where Respondent was assigned to determine whether or not Respondent's presence caused a reduction in crime and traffic accidents or offenses. Bugge denied saying that poor activity is presupposing Respondent is not doing his job.

Bugge denied cursing at Respondent, but said he may have told him not to speak while instructing Respondent on his tour change. He did not think Respondent was happy about it, but he did not recall how Respondent reacted to the reassignment. Bugge made Post 5 a mandatory post to be covered, but it was not his decision as to who was assigned to that post. Post 5 was usually a one-person post on the day tour and a two-person post at night, primarily because there is more manpower available then. He opined, "We're police officers. We walk foot posts alone. That's – there's no regulation that says you have to have two [officers]."

When Bugge walked over to the stairs to check on Respondent, Palestro was there, as was Multari, and maybe one or two other officers. Respondent was sitting up and leaning against the pole on the right side of the bottom of the stairs, which leads to the second floor. Bugge did not see any signs of physical injury, such as a bump on the head. While Respondent "didn't look right after [Bugge] started questioning him [about why he did not leave the station house]," initially, when Bugge first spoke to him, Respondent's eyes "looked fine." Respondent did not look dazed, but angry. Bugge denied yelling at Respondent at that point, as he believed it was inappropriate to talk down to an officer who may have been injured, in front of other officers.

Bugge denied saying, "That mother fucker fell down the stairs." He said he might have said something to the effect of, "I can't believe he fell down the stairs," and might have used a cursed word and might have cursed in his office, but he would not curse in front of Respondent.

Bugge was standing two or three feet from Respondent and did not get closer until he tried to unholster Respondent's firearm. He acknowledged that if Respondent did have a neck, back or spinal injury, moving him was not a good idea as it may exacerbate the injury, which was why he decided to unholster Respondent's firearm instead of removing his gun belt. He denied that unholstering the firearm was "the dangerous way to do it." He was never taught that the prudent way to do it was to take the whole gun belt off of the injured officer. He has seen weapons secured in both ways. He said he wanted to secure Respondent's firearm because he was going to the hospital.

When Bugge reached to Respondent's right side for his holster, Respondent did not move and just sat there. Bugge did not grab him. When he reached, he got "air" because his firearm was not there. He did not have to touch Respondent, as he was just reaching for the holster. Specifically, Bugge reached in Respondent's unzipped jacket. He did not recall if he touched Respondent's waistband. Bugge "wasn't going to start moving him around to get his gun belt. This is different. To [un]holster a weapon, you hit a snap and pull it out. You're not moving people around."

~~Bugge did not know if the holsters were designed to be pulled from the front but~~
he contended that the gun could be removed if it was tilted forward then pulled out. He was taught that "you have to hit the snap [on the holster], push it [the gun] forward, and pull it out." He did not recall the instructor showing him how the gun could not be

yanked out of the holster. If a person knew what he was doing, it would not take more effort to pull the firearm from the front and Respondent would not have to be moved for this to happen.

Bugge believed that Multari pulled him away from Respondent for his (Bugge's) own safety, and not because he (Bugge) had punched Respondent in the face. Devine tried to grab Respondent and had not stepped in and pushed Bugge away. He did not try to get past Multari and Police Officer Zaronski, who were standing in front of Bugge, to try to get back at Respondent.

After the incident, Bugge went back to his office where he told Sedran and Hofmann, "I can't believe he grabbed me," and he showed Sedran how Respondent grabbed him by the shirt collar. Bugge said he was not injured, but his neck area was a little red. He first asked Respondent what happened. When Devine arrived on the scene, Bugge then asked why he did not go out to his post, why he was going upstairs. Bugge did not know if Respondent staged his accident, although "a lot of people might think that." Sedran told him that even he (Sedran) did not know what happened. Because of his incident with Respondent, Bugge did not conduct the investigation into Respondent's line of duty injury and he did not interview any of the officers who were present. Upon arriving at the scene of the fall, Bugge did not ask if anyone had seen Respondent fall down the stairs. He was concerned, that was why he verified that an ambulance was ~~coming right away~~.

During redirect examination, Bugge testified that he did not move Respondent as he was trying to retrieve his firearm. He was not allowed to question any officers, as the

investigating body was doing the questioning. He asked Respondent what happened because he wanted to find out from him what happened.

Lieutenant Thomas Devine

Devine, a 24-year member of the Department, has been assigned to the 42 Precinct for the past four-and-a-half years. He testified that in March 2009, Respondent was placed on Level I Performance Monitoring by the Performance Analysis Section because his annual evaluation was below standards. He said Respondent received a low rating because he was chronically sick and had low summons and arrest activity.

On January 11, 2010, Devine was in Bugge's office when Bugge informed Respondent that he was being transferred to midnights. Devine left Bugge's office a few minutes after Respondent, and noticed Respondent lying on the floor by the stairs and Multari standing next to him. Multari told Devine that Respondent apparently fell down the stairs. Although Respondent did not have any obvious injuries, he did appear to be unconscious with his eyes closed. Devine confirmed that someone had called an ambulance.

Devine went to his office to get something for Hofmann and returned "less than a couple minutes" later. He noticed Respondent sitting on the steps and talking to Bugge. Devine heard Bugge ask Respondent why he was heading to the second floor and Respondent replied something about being transferred to midnights. Respondent stated that he did not feel good and that he was dizzy while he held his hand on his head. Bugge then told Respondent that if he felt dizzy, he should surrender his firearm. Bugge requested Respondent's firearm at least three times and each time Respondent repeated

that he did not feel good and that he was dizzy. Bugge was to the right of Devine as the former reached to Respondent's right, then, left side, for his firearm.

"All of a sudden," Respondent lunged towards Bugge. Respondent went from "kind of like a lethargic state into the Incredible Hulk." Devine tried to hold Respondent down with one hand on the right shoulder; he could not use both hands because one hand was holding a folder with paperwork and he did not want to drop it. Respondent "jumped up off that stairs and was grabbing something," but Devine was not sure if Respondent was grabbing Bugge's shirt or a part of his body. Other officers then separated Bugge and Respondent, and Lopez removed Respondent's firearm and gave it to Devine. He described Respondent's demeanor as "angry" and "agitated" and in "fistfight mode."

During cross-examination, Devine said he did not remember any specific incidents of unfair treatment by other supervisors that Respondent complained of. He heard that Respondent had filed a grievance against supervisors and the way he was evaluated. He did not recall being contacted by the Office of Labor Relations and was not contacted regarding whether or not the evaluation was prepared within Department guidelines.

According to Devine, after Bugge informed Respondent that he was being switched to midnights, Respondent requested Bugge to hear his side of the story. Devine did not remember exactly what Bugge said, but did not think he used profanity. At the time, Bugge was calm.

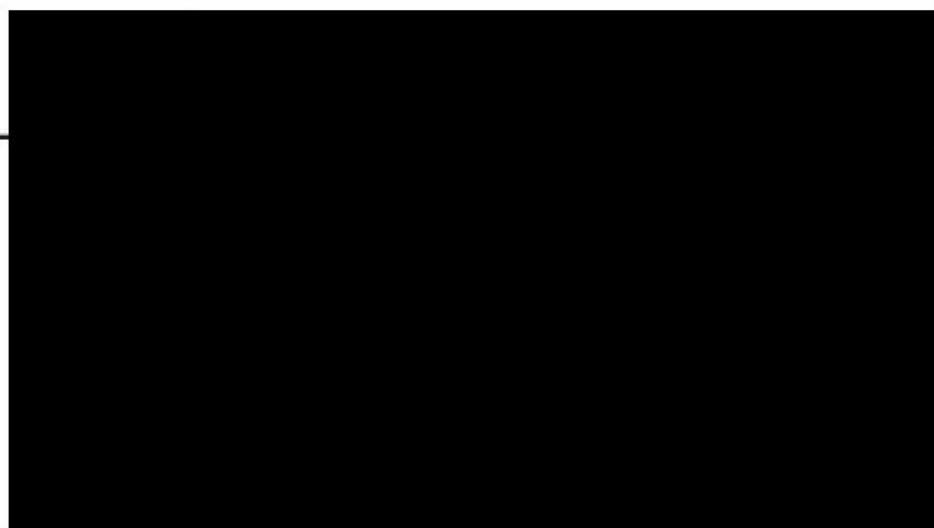
When Devine first saw Respondent at the stairs, Respondent was laying on the ground in "the center of the floor...a pretty big area." He did not notice any holes in the

walls or anything that was possibly related to the fall. He did not ask Respondent any questions or if he was okay.

Devine did not remember what was the first thing Bugge asked Respondent, but one of the first questions was why Respondent was going up the stairs. He said that Bugge was calm while asking Respondent the questions. Bugge said he wanted Respondent's firearm and might have asked him [Devine] to remove Respondent's firearm. Bugge told Respondent to surrender it. Regarding whether it was reasonable or prudent to move Respondent at all, Devine opined that "he was lying on the floor two minutes prior to this, now he was sitting on the steps...If someone legitimately fell down the steps and had an injury, yeah, you should not move him." However, Devine did not see any outward signs of injury or a bump on the right side of Respondent's head.

Devine has seen firearms secured from injured officers either by removing the entire gun belt or just the gun from the officer. This removal can happen anywhere. He clarified: "If you're unloading your firearm, you're supposed to be at the unloading station. If someone is just going to draw and present, it should just be drawn and held pointed down towards the floor."

Regarding whether the holster is designed for the firearm to be pulled from the front, Devine explained:



Devine and Bugge were standing shoulder to shoulder until Respondent lunged at Bugge, at which time Bugge fell out of Devine's line of sight. Devine testified that the transcript of his official Department interview was incorrect because Devine recalled he used his right hand to hold Respondent because he held a folder in his left hand, and not the reverse. He did not see Bugge strike Respondent; Bugge was calm until the physical confrontation took place, at which point "[h]e definitely got a little agitated." Devine did not try to hold back Bugge nor did Respondent try to grab Devine. Devine pulled past Devine and other officers intervened. Lopez took Respondent's firearm and gave it to Devine.

On redirect examination, Devine said that upon hearing that Respondent had fallen down the stairs, he has no idea if the fall was from the top, middle or bottom of the stairs. Subsequent to the physical confrontation with Bugge, as Devine held onto Respondent, "[h]e appeared that there was nothing wrong with him at all...He lunged up off those steps and got onto his feet." Respondent tried to push past Devine to get to Bugge and Devine could not hold him down.

During recross-examination, Devine explained that while he tried to hold Respondent down, Respondent succeeded in pushing past him and other officers grabbed a hold of Respondent. He did not recall Bugge touching Respondent's body and asserted that one need not touch the individual to remove the firearm.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

While Devine said that he did not know if Bugge actually grabbed Respondent's firearm, he knew Respondent's lunge occurred. Devine acknowledged that he did not check to see if Respondent was breathing while unconscious on the floor; nor did he administer any treatment to him. After running to his office and back, Devine encountered Bugge, whose reaction was neither profane, agitated, angry or incredulous. Devine did not investigate the fall, but the Bronx Investigations Unit did. Further, Devine said he did not ascertain from Palestro, or any other officer, if they had witnessed Respondent fall down the stairs. Devine did not know how Lopez removed Respondent's firearm.

During recross-examination, Devine said he never heard of Post 5 being termed a punishment post nor did Respondent complain to him about being assigned there over a long period of time. He acknowledged that the safest way to retrieve a firearm from an officer is to have that officer draw and present it.

Sergeant Larry Lopez

Lopez, a 21-and-a-half-year member of the Department and has been assigned to the 42 Precinct since he was promoted to sergeant in November 2004. On January 11, 2010, at about 2:50 p.m., Lopez came into the precinct when he heard a "loud bang" and commotion by the stairs. He went over there and saw Respondent laying face up on the ground, about two feet from the stairs. Respondent's eyes were closed, and Palestro on top of Respondent, "smacking him on the face to wake up." Respondent then opened his

eyes and Lopez told him to stay down. Someone mentioned that Respondent had fallen down the stairs. Respondent had a red mark on his face, but Lopez did not see bleeding.

Lopez told an officer to call EMS and went to Bugge's office to advise him of the fall. Bugge and Hofmann were in the office. Upon hearing the news, Bugge went to see what was going on, while Lopez and Hofmann remained in the office to converse. After leaving the office, he heard another commotion and saw people running toward the stairs. He ran over and saw Respondent with his hands around Bugge's shoulder or neck area. Respondent was standing on his own and "numerous" officers were pulling Respondent off of Bugge. Police Officer Terrasi was holding Bugge and telling him, "[I]t's not worth it, just[] stay there." Respondent was pushing forward, while Lopez, along with three or four officers, attempted to restrain him and push him back.

Meanwhile, Bugge "was just standing there," not yelling or attempting to advance on Respondent. Lopez heard Bugge say, "Grab his gun." Lopez, unsnapped Respondent's holster, pushed the gun forward and removed it, then handed it to Devine. Lopez did not know what had occurred but he believed Respondent was trying to get at Bugge. Respondent did not say anything at the time and once calmed down, he walked to the muster room without resistance. While reaching for Respondent's firearm, Lopez felt another hand going for it but did not know whose hand it was.

When Lopez was Respondent's squad supervisor after Lopez' promotion in 2004, ~~he stated that he and Respondent got along, worked well professionally "and personally,~~ he's a nice guy." They had a conversation about Respondent's low summons and arrest activity, and Respondent's response was, "If the PBA want to give me zero, I'll give zero back. When the PBA gives me a good contract, I will give activity."

During cross-examination, Lopez said when he first saw Respondent laying on the floor, he was two feet away from the stairs. He did not know if Respondent rolled straight down the stairs, across the short walkway and into the wall. He never asked anyone what happened to Respondent. He did not check to see if Respondent's head hit the wall. Lopez did not make Activity Log entries and aside from his official Department interview, no one ever asked him what occurred on the stairs, or how Respondent may have been injured. To his knowledge, no one ever took a picture of the stairs and no one has ever fallen down the stairs since he has been assigned to the 42 Precinct.

The injury on the side of Respondent's face was not similar to a contusion resulting from blunt force trauma injury such as a punch. He did not know if Respondent fell on the right side of his head and he did not see a lump on the back of Respondent's head. One of the officers holding Respondent back was Garcia, however, Lopez did not see Multari. The commotion consisted of people running and talking, but Lopez was not paying attention to what was said. He did not hear yelling or screaming, nor did he hear the voices of Bugge, Devine or Rodriguez.

Rodriguez was behind the desk but he did not know what she was doing. When he informed Bugge of the fall, Bugge got up and left his office, walking at a regular pace; Lopez did not recall him saying anything. He did not recall what Hofmann said or their conversation; she remained in the office. This was the first time Lopez had seen an officer fall down the stairs.

Upon arriving at the commotion, Lopez testified that he saw Respondent with his hands up, putting his hands around Bugge's neck and shoulder and officers pulling him off of Bugge. He could not see Bugge's hands because his view of Bugge was obstructed

and his view of Respondent was not. Terrasi was the only officer next to Bugge. He did not see Multari. He did not see or hear any response from Bugge after he was grabbed by Respondent, as his attention was focused on Respondent.

Lopez agreed that what he observed was that Bugge was grabbed by a subordinate and Bugge had no response; he just stood there with Terrasi. Bugge's voice was raised when he said, "Get his firearm," but he was not yelling.

Respondent calmed down while Bugge was still in front of him. Lopez did not recall Respondent making any comments to him (Lopez), including that he felt dizzy, that his head hurt and that he just wanted to go to the hospital. Lopez recalled saying at his official Department interview that EMS personnel told him that Respondent had neck injuries and a bump to the head. Additionally, Lopez said during the interview that Respondent had a scratch or bruise in the area of his right temple. Lopez remembered that his interviewers had inquired whether the injuries could have come from the fall, but he did not remember what his answer was, nor could he remember if he was asked if Bugge struck Respondent.

Lopez did not know what the urgency was in retrieving Respondent's firearm, although, "[Respondent] wasn't acting normal...does a normal person attack a Commanding Officer of a Precinct?" Lopez did not know what transpired before he got to the scene. If a person is being assaulted, he has a right to defend himself, however, "a police officer...he is not going to defend himself and strike a Commanding Officer."

Lopez agreed that, basically, physical force can be used to stop an assault.

Lopez agreed that Respondent was "a nice guy" and they had conversations about "vehicles, vacation, family," and "[they] talk." The event that occurred, and the way that Respondent behaved, was unusual. Lopez did not see the entire incident.

Lopez did not make any adjustments on the roll call for January 11, 2010, [Respondent's Exhibit (RX) A] that did not pertain to the officers assigned to him in the School Unit. He did not make the handwritten change on the roll call that reassigned Respondent from a sector car to Post 5, nor did he recognize the handwriting. According to the roll call, there were 75 civilian and uniform members working that day. If there were a Change Sheet, it would be evident who made the changes, as a general rule, but sometimes "[t]hey don't make entries on the Change Sheet; they just make entries on the roll call." The roll call is pre-printed [by computer and in advance] and then handwritten changes are made to it.

During redirect examination, Lopez said that he had no knowledge as to how the information on the roll call came to be entered or changed. He only recognized the changes made in his own recognizable handwriting, which did not involve Respondent.

Upon questioning by the Court, Lopez agreed that the Change Sheet is normally attached to the roll call. Lopez reiterated that he heard a "boom," someone yelled, "He fell down the stairs," and Lopez ran over to find Respondent lying on the floor. When he retrieved Respondent's firearm, he was in front of Respondent, trying to push him back. Lopez unsnapped the holster, pulled the ~~firearm~~ to the front, and removed it. He demonstrated the technique with the Court Officer.

During redirect examination, Lopez agreed he was trying to remove the firearm while restraining Respondent.

During recross-examination, Lopez stated that he was not trained by the Firearms and Tactics Section to remove another officer's firearm. He agreed that this can cause an accidental discharge. As to the urgency in removing Respondent's firearm, Lopez was following orders given by Bugge. He agreed that firearms are not supposed to be handled in the stationhouse; that they are supposed to be handled in a safe location, like a firearms safety station, to prevent accidental discharges and ricocheting. With his firearm-removal technique, there was a risk that other people could have been hurt.

During redirect examination, Lopez agreed that he followed Bugge's orders when removing Respondent's firearm. The situation involving Bugge and Respondent was not normal and Bugge made a rational decision that Respondent "was not acting according to his standards."

During further recross-examination, regarding whether there was an urgency to remove Respondent's firearm, Lopez said Respondent, "was not acting rational, we don't know what the officer had in his mind or what he intended to do, so Inspector Bugge did say to remove the firearm. Was it a smart choice? Yes it was." He denied that Bugge's decision was in direct conflict with what he was trained to do as a police officer. While he was not taught to remove firearms from an officer in the manner he used, Lopez declared, "They don't train us to do everything. Sometimes you learn as you go, and for this situation, you had to remove his firearm. His firearm had to be removed...There's a Patrol Guide procedure about [handling firearms in the command] but there's not about removing a firearm from the officer when the officer is acting irate."

Despite the Patrol Guide procedure that says that an officer is not supposed to handle firearms in the Command other than at a firearms safety station, Lopez believed

that the more prudent course of action was to take the firearm out of the holster the way that he did, while Respondent was still lunging at Bugge and being held back by Lopez and others, because “[t]hat was the only way at the time to handle that situation. He did not consider taking the firearm before Bugge’s directive.

During further redirect examination, Lopez said two or three minutes elapsed between the time he arrived on the scene and saw Respondent and Bugge, and the time that Bugge ordered to have Respondent’s firearm removed.

Sergeant Cynthia Rodriguez

Rodriguez, an eight-year member of the Department was assigned to the 42 Precinct in 2008 and worked with Respondent for approximately a year during which she was his direct supervisor. She testified that the platoon commander, or whoever the patrol supervisor was that day, would determine Respondent’s assignment for each day. She said that Respondent was “laid back [and] needed some sort of directives at times.” At times, she would have to give him directives on how to answer jobs properly.

She did not remember specifically how many times she placed Respondent at Post 5. She assigned him there because the post needed to be covered (as per Bugge) and Respondent did not mind being assigned there. She said there were times when Respondent, while assigned to Post 5, did not respond to radio runs for conditions at his post without a supervisor directing him to answer his jobs. Respondent never complained to her about being assigned to Post 5, nor did she ever single him out by assigning him there.

She testified that from July 2009 to January 2010, she gave Respondent a “below standards” rating because Respondent “didn’t seem to be motivated to do anything” and was “not willing to, in [her] opinion, work well with others.” Additionally, Respondent was designated as Chronic Sick – Category “B”¹ and she believed that the Administrative Guide recommended that an officer of that designation be given a 2.5 [out of 5 on the evaluation].²

Rodriguez testified that on January 11, 2010, some time after 10:00 a.m., Respondent called her and requested to take a personal. Rodriguez approved his request and reminded him of the time he was starting his personal because she did not want him to “get in trouble.” Sedran also called inquiring if Respondent had taken a personal.

Later on, Respondent came into the Command to see Bugge. Rodriguez, while seated at the desk, observed Respondent leave Bugge’s office and head towards the stairs. She then heard a “loud thump,” looked to her right and saw Respondent lying on the floor. After learning from other officers that Respondent had fallen down the stairs, she returned to the desk and called for an ambulance.

Rodriguez then observed Bugge walk towards the stairs. She heard scuffling and Bugge saying, “Give me your gun, give me your gun,” followed by someone saying, “No” a couple of times. Rodriguez was standing around the desk during the incident and saw officers holding back Respondent and Bugge. Although both Bugge and Respondent

¹ Patrol Guide § 205-45 states: “Chronic Sick - Category “B” - A uniformed member of the service who reports sick for any reason, except initial line of duty or for hospitalization at any time, six (6) or more times within a twelve (12) month period; or for any reason except an initial line of duty absence or for hospitalization at any time, four (4) or more times within a twelve (12) month period and loses forty (40) or more workdays (not calendar days).”

² Patrol Guide § 205-48 states: “Give consideration to attendance record of ratee who is classified “Chronic Sick - Category A” in determining appropriate overall rating. Consider evaluating ratee “Very Low” if member is or has been classified as “Chronic Sick - Category B” during the rating period.”

were upset, Respondent appeared more so. She did not hear them exchange words. Respondent was “pushed” into the muster room, “[h]e didn’t just walk in there.”

On cross-examination, Rodriguez disputed that she needed to document the instances she had to give Respondent redirection, and she had no such documents because she spoke to him “personally, sergeant to cop” and her intention was not to discipline. It was her discretion to document her conversations with him, and she did not. Rodriguez provided an example that occurred where Respondent was her operator and they were responding to an assault in progress. Respondent was driving “five miles an hour,” and she had to direct him to “get there a little quicker.” He had not treated the job like a priority job when that was what it was. She did not document this and did not inform anyone because, “[a]s a sergeant, [she] took care of that [her]self.”

When asked if Respondent was not handling jobs properly, Rodriguez said Respondent did not have the initiative to respond to radio runs occurring on his post without a supervisor getting on the police radio and asking him to respond to the job. Using her discretion, she did not document these occurrences. She acknowledged that a police officer may be disciplined for not answering a job.

Regarding Respondent’s lack of motivation, Rodriguez tried to have conversations with Respondent and she thought they had a good rapport and that “he was going to do what he needed to do.” She attempted to motivate and supervise him by visiting his post and making sure he was doing the “right thing” on his post or on patrol. She declared, “[Y]ou don’t have to be supervised in a car, you can be supervised on a foot post. It is not required that officers be in a car every single day.”

She denied that her comments on Respondent's motivation had anything to with his preparation of summonses, Stop, Question and Frisk Reports, Police Accident Reports or Complaint Reports. While she did not allege that Respondent did not respond to jobs, at times, he did not handle them properly. It was unique that she had to pay more attention to Respondent on certain jobs compared to the other ten or 11 officers in her squad.

She had spoken with Sedran regarding Respondent's performance, but did not recall the substance of the conversation. Sedran related to her that he, too, had conversations with Respondent and that one time Respondent told him, essentially, "radio runs is all I need to do."

Rodriguez was never contacted by the Office of Labor Relations regarding her being the subject of a grievance (RX B, PBA Grievance Form). She recalled that Sedran had told her that Respondent was appealing his 2008 annual performance evaluation (RX C) on which Rodriguez gave Respondent a rating of 2.5 [out of 5]. It was prepared in the wake of her arrival at the 42 Precinct in August 2008. Rodriguez could not remember how long she had worked with Respondent before completing his annual evaluation.

She acknowledged that Respondent had 58 quarterly³ points. If the Administrative Guide states that an officer with 55 to 59 quarterly points is to be rated 4 or 4.5, then the overall evaluation should reflect that. However, she said that the Administrative Guide also provides that if a police officer is designated Chronic Sick Category "B," a rating of 2.5 is suggested. Respondent was Chronic Sick Category "B" at the time and she did not need to know why he was sick. On the evaluation, she noted

³ Transcribed as "quality."

that Respondent had “a substandard sick record as well as work performance.” She said Respondent’s Chronic Sick Category “B” status justified the disparity between the quarterly points and the overall evaluation [rating].

Rodriguez rated Respondent a 2⁴ [out of 5] for “Report/Clerical Duties” because he needed some supervision with regard to report writing and clerical duties. He was rated a 3 [out of 5] for “Processing Arrests” because he needed little or no supervision processing arrests using a program that tells you what paperwork is needed. An officer who receives a rating below 3 is sent to the Employee Management Division, but she did not know whether Respondent was retrained.

Rodriguez said that according to the roll call for January 11, 2010, Respondent was assigned to Sector George by roll call personnel, but handwritten changes were made and he was reassigned to Post 5. Rodriguez did not know who made the change to the roll call. When he (Respondent) came into the precinct to see Bugge, he looked “fine” and did not appear angry. When she spoke to Sedran on the phone, Sedran did not say that Respondent was out of control, upset, acting irrational, or that he wanted to shoot up the precinct, nor did he say anything similar to her in person. After the incident, [by the stairs] Respondent appeared angry. She told Sedran the time when Respondent began his personal, “which was past the set time of a personal...It’s standard 20 minutes.” She acknowledged that there is no Department policy that suggests how long an officer can take for a personal. She did not know where Respondent took his personal while he was fixed at Post 5.

⁴ According to RX C, Rodriguez rated Respondent 3 [out of 5] in all 12 performance areas and all 16 behavioral dimensions except for “Report/Clerical Duties,” “Judgment,” Drive/Initiative,” and “Interpersonal Skills,” which she rated him 2 [out of 5].

After leaving Bugge's office, Respondent did not appear to be angry. She believed he went up the steps, then she heard a "large thump" and, from the desk, saw an officer from the waist down, lying on the floor. Several officers ran over while she checked from the TS area and saw that it was Respondent, with his eyes open. She then called for an ambulance. Upon returning to the scene, Respondent was seated on the steps awaiting EMS and did not appear to be in any distress. She did not see a bump on his head or blood on his face. He was assisted up from the floor. She did not speak to him.

After hearing the thump, Rodriguez observed Bugge walk by fast towards the stairs. Bugge spoke with Sedran in a "loud tone," but she had no idea what they were talking about. Seconds later, she heard Bugge ask Respondent for his firearm. She heard someone say, "No, no, no," followed by scuffling. Rodriguez did not see where Bugge and Respondent were while Bugge was requesting Respondent's firearm. Bugge's voice was raised at the time he requested the firearm.

According to Rodriguez, Department policy does not dictate a specific area where a supervisor is to remove a firearm from an officer. However, if an officer is going to unload his firearm, then it is recommended that he use a firearm safety station. As per the Patrol Guide, firearm removals by supervisors do not specify the use of a safety station.

After the scuffle, Bugge seemed "a little upset" but he was not as upset as Respondent. Rodriguez observed at least one officer holding and pushing Bugge back by grabbing Bugge's upper body. Bugge was not trying to get around the officers. She saw an officer take Respondent to the muster room, but did not see where the officers took

Bugge. She explained that she did not go to the muster room to speak with Respondent because she was assigned to the desk and also because there were already other officers attending to Respondent. She did not know if Bugge actually grabbed Respondent and did not see Bugge grab Respondent. After the incident, she did not speak with Respondent to ascertain the details of the incident.

During redirect examination, Rodriguez said that after the scuffle she saw officers holding back both Bugge and Respondent. She saw Respondent reaching toward Bugge but not the reverse. Respondent looked "upset," "angry" and "red," and Bugge looked "a little upset as well," but not as angry as Respondent.

Rodriguez acknowledged that a 20-minute time limit on a personal is the general practice of the Department and not written anywhere in a guide. When Respondent called her regarding his personal, she reminded him of the time and the 20-minute parameter.

During recross-examination, Rodriguez said she has never disciplined anyone for taking a personal beyond 20 minutes, nor did she know whether Respondent was disciplined for taking an extended personal. He did not inform her that Sedran and Bugge tried to discipline him for taking a personal beyond 20 minutes, nor did he tell her that the Office of Labor Relations told Bugge and Sedran that no such rule exists. She did not hear Bugge ask Respondent if he was okay.

Upon questioning by the Court, Rodriguez agreed that she has issued CDs in her career. She did not hear the exchange between Respondent and Bugge except for the part where Bugge requested the firearm. She did not hear either Bugge or Respondent say they were punched, hit, slapped or kicked.

Respondent's Case

Respondent called Police Officer Vivian Plata-Martin, Police Officer Joseph Terrasi, Police Officer Cesar Garcia, Police Officer Thomas Beaumont, Deputy Inspector Nilda Hofmann, and Police Officer Christopher Multari as witnesses. Respondent testified in his own behalf.

Police Officer Vivian Plata-Martin

Plata-Martin, a nine-year member of the Department, was the recorder in Sedran's RMP on January 11, 2010. Sedran drove to Respondent's post to sign his Activity Log. It was not a desirable post because "you're on foot all day." It was sometimes a solo post and at other times a two-person post. Some considered Post 5, a punishment post, as it was assigned to police officers who "weren't doing what they were told to do."

Plata-Martin testified that when Sedran arrived at Post 5, he did not see Respondent so he contacted Respondent via the police radio. Respondent answered, approached and was about to hand over his Activity Log when Sedran stepped out of the RMP. Respondent's demeanor was "fine. There was nothing wrong with him when he approached the car." Sedran and Respondent did not have a conversation other than the latter handing over his Activity Log. He was speaking in a normal tone and not yelling or screaming at Sedran.

Sedran and Respondent proceeded to have a conversation outside of, and away from, the RMP. The radio and the heat in the car, her police radio, and the car windows being up impeded Plata-Martin's ability to hear the conversation. She could "not really" hear their conversation. She said neither of them were yelling or screaming. She did not

look at them because she did not want to get involved. She had, in the past, heard Respondent complain to fellow officers about being mistreated in the 42 Precinct. After about ten minutes, Sedran returned to the RMP. She did not recall if Respondent walked over to the RMP, or if he yelled at Sedran before they drove away. She and Sedran did not discuss the conversation. She did not recall if Sedran claimed Respondent was out of control or acting irrationally, yelling and screaming at him, or if he told Respondent to get away from the car.

Sedran drove to the precinct and during the drive Sedran seemed "agitated" but did not say why. At the precinct, Plata-Martin went upstairs but did not know where Sedran went. Plata-Martin saw Respondent again at the precinct during a "big commotion," where she saw Respondent laying on the floor in front of the staircase. "A bunch of people" were calling Respondent's name but "[he] was not coherent at all." She was not sure if any supervisors were among the "more than five" officers calling Respondent's name. Plata-Martin remained by the stairs for less than five minutes and then went back upstairs. She did not speak with Sedran the rest of the day.

During cross-examination, Plata-Martin explained that Post 5 is considered a punishment post because it is assigned to officers for "lack of activity, [and because] you didn't do what you were told to do." She remained in the RMP the entire time Respondent and Sedran outside and she was not able to hear their conversation.

~~Upon examination by the Court, Plata-Martin said that the EMS station has a~~
restroom and it is less than 30 feet from Post 5. Post 5 is a residential area with commercial establishments. She did not recall how many times she was assigned to Post 5, but said it could have been more than once. The "big commotion" she heard was

voices yelling. She did not know if it involved a perpetrator or if something was going on within the stationhouse and that was why she went to investigate.

On redirect examination, Plata-Martin said that her assignments to Post 5 sometimes came directly from the roll call office and at other times her post was changed to Post 5 by either Rodriguez or Sedran.

On recross examination, Plata-Martin said when her post was changed, she did not know the reason why.

Police Officer Joseph Terrasi

Terrasi, a nine-year member of the Department, testified that on January 11, 2010, at 2:00 p.m., he was in the highway safety office completing some paperwork when he heard a commotion, "noises" and "scuffling." He did not hear yelling. He went to check out what happened and, by the TS, he observed Multari holding back Bugge by standing in front of him.

Terrasi did not recall Bugge's demeanor while Multari held Bugge back, nor did he remember if Bugge said anything or if Bugge tried to move around Multari. He did not recall in what way Multari held Bugge back or if Multari was saying anything. He did not remember how long Multari held back Bugge, how long he himself stayed at that location, or if there were other police officers there. He did not remember seeing Respondent or if Bugge or Respondent moved at all.

Terrasi said he assisted Multari with holding back Bugge because he wanted to "alleviate the problem...to calm everything down...it was the right thing to do." Terrasi did not know what was going on at the time but felt it needed to be alleviated.

Police Officer Cesar Garcia

Garcia, an eight-year member of the Department, testified that on January 11, 2010, he was in the 42 Precinct and saw Respondent standing and trying to go towards the stairs. Respondent looked “visibly upset” and “a little disheveled.”

At a later time, while in the youth office (which is approximately 20 or 30 feet away from the stairs), Garcia heard a commotion and multiple people yelling but could not discern whose voices were involved. He ran out of the office and went towards the yelling. He observed two officers facing away from the commotion, standing in front of Bugge but he could not identify the two officers because they had their backs towards him (Garcia). Bugge was standing by the property room, in the hallway area leading to the [highway safety office] and not near the stairs. Additionally, there were approximately five officers holding Respondent and trying to pull him back. He did not remember what Respondent was saying. He was not focused on what anyone was saying and did not know what, if anything, anyone said.

Garcia did not know what had occurred between Bugge and Respondent, but he assisted other officers and grabbed onto Respondent because Respondent looked “visibly upset.” Respondent was pushing toward Bugge’s location. Garcia said that Lopez was also helping him hold Respondent back and at some point Lopez said, “I got it, I got it” referring to Respondent’s firearm. Garcia did not see whether or not Lopez was involved in retrieving Respondent’s firearm.

Garcia did not know how long it took to get Respondent out of the area and to the muster room. Respondent walked on his own accord and was not dragged there. He appeared “shaken up.” While Respondent was in the muster room, Garcia saw

Respondent holding onto his head and noticed a "smear of blood" on Respondent's face. Respondent might have also hurt his finger. Garcia did not know if Respondent had a bump on his head.

Garcia did not recall Respondent telling him that he was being mistreated by "management" nor did he ever complain about being assigned to Post 5. It is not a desirable post.

On cross-examination, Garcia said that Respondent was resisting as he [Garcia] was "pulling" Respondent to the muster room.

On redirect examination, Garcia explained that Respondent was not resisting him [Garcia] but rather just pushing towards Bugge. He saw two officers standing in front of Bugge but did not know why they were standing there at that time.

On recross examination, Garcia said he did not know what was happening with Bugge and the two other officers that were standing in front him because he was focused on grabbing hold of Respondent. At that time, he had no understanding of what had taken place between Respondent and Bugge.

Upon examination by the Court, Garcia opined that if Respondent were let go, he would have gone straight to Bugge. Bugge did not look like he was trying to get at Respondent. Bugge was standing, with his arms crossed, behind the two officers.

On further redirect examination, Garcia clarified that although Bugge did not move from his location, his arms were crossed and he occasionally flailed them.

Police Officer Thomas Beaumont

Beaumont, a six-year member of the Department, has been assigned to Post 5 before, working the post solo, on the day tour. He described it as a residential and business area that gets busy with pedestrian and vehicular traffic, radio runs and criminal activity. It was not the worst post, but "not really" desirable. He has heard other officers characterize the post as busy and undesirable because it is a foot post.

Beaumont was the TS operator but was in the 124 room when he heard "[l]oud banging" coming from the stairs. It sounded like someone was "bringing a locker down the stairs." When he went over to the stairs, he saw Respondent lying on the floor and Multari standing next to him. Multari told Beaumont to call an ambulance. Beaumont knelt down to Respondent and tapped him on the chest but Respondent was unresponsive and unconscious. Multari remained with Respondent and Beaumont returned to the 124 room, approximately 10 to 12 feet away from the stairs.

While in the 124 room, Beaumont heard a commotion again and heard several people say loudly, "whoa, whoa, whoa." Beaumont walked back to the stairs and he observed Multari holding Bugge and other officers holding Respondent. Bugge was faced away from Respondent and Beaumont did not know if Bugge ever turned around. Beaumont did not recall if Bugge, Multari or Respondent said anything, nor did he remember comments from any other officer. There were seven or eight officers there. He did not remember seeing Rodriguez there. Respondent was taken to the muster room by other officers.

During cross-examination, Beaumont clarified that officers were holding Respondent as they were bringing him to the muster room, but he did not remember

Respondent fighting against the officers or pushing against them while they were holding him.

Upon examination by the Court, Beaumont said that when he first tended to Respondent, he noticed a bump on the back of Respondent's head, but he did not report this to any of his supervisors. He did not see any supervisors respond to Respondent's aid while Respondent was lying at the bottom of the stairs. Beaumont did not observe any fighting between Respondent and Bugge nor did he hear either one state that he had been hit by the other.

During redirect examination, Beaumont stated that no supervisor ever asked him to prepare a witness statement regarding his observations of Respondent's injury.

During recross-examination, Beaumont said Respondent was unresponsive for approximately five or ten seconds. He did not know if the bump on Respondent's head was caused by the fall or if it was preexistent.

Deputy Inspector Nilda Hofmann

Hofmann, a 21-year member of the Department, was a captain and assigned as the Executive Officer of the 42 Precinct at the time of the incident. She testified that, prior to January 11, 2010, she recalled only one instance where she had spoken with Bugge about Respondent, after Respondent came to the office looking to speak with Bugge about appealing his evaluation. ~~Hofmann did not know Respondent had filed a grievance against Rodriguez, Sedran and Bugge.~~

Bugge was not there and she later informed him that Respondent came by and why. Hofmann and Respondent discussed his evaluation for about 15 or 20 minutes and

she informed him that because of his chronic sick status, his overall evaluation could not exceed 3.0. She said Respondent brought documents with him to contest his evaluation but she did not recall what the documents were.

Hofmann agreed that supervisors utilize the Administrative Guide when completing officers' evaluations and that it shows certain amounts of quarterly points and a range of evaluation scores that is supposed to be given to the member. The sum of the quarterly points should be consistent with the officer's rating. When asked if there was no such policy that makes an officer's sick record an issue with respect to his evaluation, she could not remember a specific procedure that governs the policy.

She stated that since Rodriguez was only at the precinct for a few months, she should have conferred with Respondent's previous supervisor before evaluating Respondent, but Hofmann did not know if Rodriguez had done so. If an officer has a total of 58 quarterly points, according to the Administrative Guide parameters, it would be inconsistent for a supervisor to give that person a rating of 2.5. The supervisor would have to justify why the rating is inconsistent with the parameters.

If a sergeant notices deficiencies in an officer, the sergeant should document it. There is a space on the Monthly Activity Report to make comments. Even if a lieutenant evaluating a sergeant's comments does not see any comments on the officer's Monthly Activity Report, if the lieutenant is the platoon commander, he should already be aware of the issues on his platoon. While it is not written anywhere, sergeants should document progressive instruction and discipline to justify the rating to be given to the officer. Comments should be made on the Monthly Activity Reports, as they are reviewed by the lieutenant and the lieutenant may want to address the issue. Hofmann challenged the

notion that if nothing is documented, then there is an assumption that the officer is performing as he should. She said that the platoon commander could be verbally informed, and he should have conversations with his sergeants all the time, as he works with the sergeants and officers on a daily basis. As a captain, Hofmann did not have daily interaction with officers, so if the comments section of the Monthly Activity Report is left blank, she would not know what the sergeant thought.

Respondent was able to interact with Hofmann and he was not hostile or threatening to her. She did not remember Respondent being a disciplinary problem, but in terms of his activity, “[s]ummons, ... arrests, verticals, ... every category,” he, compared to other officers, was at the bottom. While there was no required number in terms of activity, whoever’s activity amount was higher would be on the top and the lowest would be on the bottom. This does not mean that the officer on the top is the more effective officer. She did not know why Respondent was rated lower than other officers if there is no numerical value to it because she did not evaluate Respondent.

Post 5 was deemed a high priority post as per the Commanding Officer of the 42 precinct because of the occurrence of a lot of crimes there. It is a solo post on the day tour and the 4 x 12 tour. While it is not a desirable post, she has never heard it referred to as a punishment post. She understood a punishment post to be a post that had no necessity in terms of the officer being there. She has never heard of a punishment post ~~being where an unfavored officer is assigned on a consistent basis. She did not remember~~ Respondent complaining to her or any other supervisor about being assigned to a punishment post or having his assignments change from being in an RMP to something else.

Although Respondent was listed at the bottom of the Command in terms of activity, Hofmann did not know if he had the least activity or if someone else had less. During their discussion about his evaluation, Hofmann also told Respondent that in addition to his chronic sick status, his activity "was not there." Respondent told her that he answered his jobs properly and that was what he should be rated upon. She also reminded him that he needed to address conditions on his post. None of his supervisors had suggested that Respondent had not addressed those conditions but "according to his activity it shows that he is not addressing situations." Hofmann did not remember the content of Respondent's evaluation and no one ever brought it to her attention that he was not preparing paperwork correctly.

On January 11, 2010, Hofmann was the Duty Captain on the 4 x12 tour. She might have seen Sedran that day but did not recall having a conversation with him. She was not privy to any conversation involving Bugge and Sedran and she had no conversation with Bugge about Respondent being on Post 5. She "vaguely" remembered Palestro saying to Bugge something in the sense of [Respondent] shooting up the precinct. She did nothing about that because she did not believe Respondent "as being capable of doing something like that." Bugge was not upset and did not call anyone. Bugge did not tell her why Respondent was upset or whether he had a conversation with Respondent prior to her arrival.

~~She was present in the office when Respondent, accompanied by Palestro, came~~
in and Bugge told him he was going to the first platoon. When Respondent walked in, he was not upset, yelling or screaming. He walked in, listened to Bugge and then walked out. Bugge did not raise his voice or curse. Respondent wanted to explain or say

something, but Bugge said, “[N]o, everything has been said” or “[I]t’s already done.”

After Respondent left the office, Hofmann did not see him again until 9 or 10 p.m.

Respondent was called into the office to be notified of his shift change. She did not hear anything about taking too long on a personal. There is nothing written about how long an officer can take a personal, “but we all understand...it’s a 20 minute, normally officers take a 20 minute break.”

While Hofmann and Bugge were in the office after Respondent left, someone came in to tell them that Respondent fell down the stairs. She did nothing at the time because Bugge jumped up and ran out, she assumed, to see what happened. A few minutes later, Bugge returned to the office and said, “I can’t believe he choked me, he choked me.” Bugge’s collar was open and he had redness around his neck. He was upset but not yelling and screaming. He was “red” and “sweating” and had walked into the office by himself. Bugge did not say anything about the interaction and notified the chief. She was not present at the scene of the incident, so she did not know the veracity of what Bugge said about being choked, or if Bugge struck Respondent.

There should have been an investigation conducted by the sergeant and lieutenant into the line of duty injury. It is not written anywhere that a supervisor has to check on a member of her squad to see how he was doing. Sergeants should know what is going on with their subordinates. Sergeants and lieutenants should have general concern for their officers who are hurt.

Police Officer Christopher Multari

Multari was appointed to the Department in July 2006 and has spent his entire career in the 42 Precinct. He had worked Post 5 numerous times and did “not really” like

working it. It was a "pretty busy" post and, depending on the availability of staffing, is usually covered by two officers because "[i]t used to be a pretty bad area," a "heavy shooting and narcotics location." Supervisors, to this day, discuss the safety factor of that post. Because of safety, most of the foot posts in the 42 Precinct are two-person posts, personnel constraints permitting.

Multari said the punishment posts in the 42 Precinct were at Post 5, and Freeman Street and Lyman Place. These locations were high-crime areas with gang activity and shootings. He agreed the posts were undesirable because of the safety factor. A supervisor would visit an officer posted there usually once a tour, and other than that, the officer was essentially out there on his own. He explained that when on the punishment posts, "You usually see cops constantly" because other officers would check up on the officer on the fixed post, aware that he was on his own.

According to Multari, assignment to a punishment post may occur if an officer has the least seniority, or if a supervisor does not like an officer. It may also occur if an officer does not have summons or arrest activity. In 2008 and to the present, officers on the 4 x 12 tour at the 42 Precinct were "[t]old you have to come in with at least something...you should come in with something." While the supervisors did not specify a number of summonses, Multari understood it to be "around 10 a month" based on discussions with other officers. When asked if supervisors ever addressed roll call and told officers they were supposed to write a certain amount of summonses, Multari said the supervisors addressed roll call and advised them that summonses for certain offenses were needed, and if the officers could write more of those types of summonses. With regard to arrest, "[t]hey would like" if officers had at least one a month. It did not have

to be a felony or misdemeanor arrest, nor an arrest for a certain offense. This was common knowledge amongst officers in the 42 Precinct and was the topic of discussion in the locker room and at roll call.

On January 11, 2010, Multari was at the 42 Precinct preparing for the 3:00 p.m. start of his tour when he heard what sounded like a locker being thrown down the stairs. He was standing in front of the radio room, next to the stairs, facing the TS. The noise lasted "a couple of seconds, if that," and he did not immediately look at the stairs. From his peripheral vision, he saw Respondent come down the stairs, "maybe like five steps," and hit the wall next to the property room. He saw Respondent come down the end of the staircase and then roll across the floor and hit the wall. The fall was not a slow tumble and occurred "very fast." Respondent hit the wall "very hard," such that Multari heard "a distinct sound" of Respondent's skull hitting the wall. Initially, the only other person in the vicinity was Beaumont who was on TS duty and he (Beaumont) stood up to see what happened.

Multari ran over to Respondent, who looked like he was unconscious and had his eyes closed. Multari stood over Respondent, straddling him, and shook him on the shoulder to make sure he was alive, as Multari opined that the fall and contact with the wall was "pretty severe." About five seconds later, Respondent awoke and started blinking. He said nothing to Multari. Multari could not see any injuries. He helped Respondent get up, sat him on the stairs, on maybe the second or third step, and leaned him up against a pillar facing the radio room.

"Within a few seconds of the incident," Lieutenant Devine and Inspector Bugge appeared. Multari did not recall Devine saying anything to, or approaching, Respondent.

Multari did not remember if Devine asked him (Multari) what happened or if anyone saw what happened to Respondent, and Bugge did not ask him either. When Bugge approached, he was not running, but his pace was faster than a walk. Multari did not see whether or not Bugge asked Respondent how he was feeling. Bugge did not ask Respondent about his condition and Multari, because he was standing behind Bugge, could not tell if Bugge was concerned about Respondent's condition. Multari called for an ambulance; he did not remember if Devine mentioned calling for an ambulance, though Bugge did not.

The first thing Multari heard was, Bugge stating, not to anyone in particular, in a loud voice, but not yelling, "What did he fall down the stairs." Bugge then said to Devine, "Tommy, I want his gun." Devine, who was standing to the side, did nothing and Bugge leaned in and tried to take Respondent's firearm. Bugge did not say, "Draw and present your firearm," as per the procedure taught by the Police Academy and by the Firearms and Tactics Section.

As far as the operation of the safety features of the holster, the holster must be unsnapped; the gun rocked forward and then pulled out. Multari was never taught how to retrieve a person's firearm from the front. Multari did not recall if Respondent said anything to Bugge when Bugge leaned in on Respondent's right side and tried to retrieve Respondent's firearm in that manner. Respondent did not resist Bugge. Bugge did not lean in and lightly touch Respondent; rather, "he leaned in to grab the firearm... It was a little aggressive." Multari did not remember if there was a firearm at Respondent's right side and did not see Bugge pull a firearm out of his holster. Multari then guessed Bugge went to Respondent's left side because, Multari believed, Respondent is left-handed.

Respondent was wearing a jacket. Multari did not recall if Respondent had his duty holster or a pancake holster. He did not recall what Devine was doing while this was happening.

As Bugge leaned in, Respondent tried to get up and their chests made contact. Multari did not recall what exactly occurred next. He did not see Bugge punch Respondent and he did not hear Respondent state, "He hit me." He did not remember Respondent complain or make any noise with respect to the contact between the two men. At the time, Multari was standing two to three feet behind Bugge and "saw a confrontation erupting." He did not believe Respondent intentionally initiated contact with Bugge. Respondent essentially looked the same as he looked prior to the contact and he did not get up and move towards Bugge; it was Bugge who moved towards Respondent.

While Bugge was reaching for Respondent's firearm on his left side, Respondent "went to get up...he didn't stand up all the way. He made the motion of getting up, and they were so close that he didn't get up all the way so." While Bugge initiated the contact between the two men, Multari stated that "it was just a freak thing that happened at the same exact time." He was not aware of what occurred between the two prior to the incident on the stairs.

Multari grabbed Bugge in a bear hug, because he was closest to him, and pulled ~~him away to thwart a physical confrontation. At that time, he saw Bugge both as his supervisor as well as a person who he was trying to stop from fighting another person.~~ He did not think Bugge was "under control." Bugge was "irate" and "screaming," but he did not fight or struggle with Multari in any way, nor did he resist being pulled back by

Multari. Multari believed that he himself, at 6'1" tall and 240 pounds, was physically stronger than Bugge at 5'7" and 180 pounds.

Multari did not know if Bugge was irate at him (Multari), but he did seem to be irate at Respondent. Multari did not know if Bugge directed any comments toward Respondent, who was sitting in the stairwell where Multari had helped him to earlier. He did not remember if Respondent was standing when he (Multari) grabbed Bugge. He believed he physically moved Bugge six feet away, to the corridor between the [highway safety office] and the stairway, then let him go. Bugge did nothing in response to his release; he was screaming something at someone, but Multari did not recall what or at whom. Instinctively, Multari stood in front of Bugge to prevent him from walking past him and back to the stairs. Multari stood there with Bugge for about 15 seconds. Other officers descended on the scene and Multari did not recall what happened afterwards.

During cross-examination, Multari agreed that immediately after the incident, he was questioned at an official Department interview and during much of his testimony he indicated that he did not actually see what had taken place between Respondent and Bugge. Bugge's back was to him and his view of Respondent was partially obscured. He did not see Bugge hit Respondent. When Respondent stood up simultaneously with Bugge leaning in, he was not able to see what Respondent was doing with his hands. He did not recall hearing Bugge tell Respondent directly that he wanted his gun. Multari denied ever characterizing, at his official Department interview, the contact between Respondent and Bugge as them "bumping chests."

Because of his vantage point, Multari did not see if Bugge physically made any kind of contact with Respondent at the time he was leaning in to reach for Respondent's

gun. He could not see if Respondent reacted when Bugge went to take the gun from his right side. When Bugge was reaching for the gun, he "was almost in [Respondent's] lap," meaning Bugge was close to Respondent. Multari did not feel the need to intervene at that point, not until contact was made between the two. He pulled Bugge away because he felt the situation was escalating, as he saw contact from Respondent toward Bugge.

The contact between the two men, which occurred when they "[j]ust happened to bump into" each other at the same time, seemed like a normal occurrence, and he would not normally intervene if two members of the service were to accidentally bump or make contact with each other. In this instance, Respondent made contact, though unintentionally, with a superior officer, and "[y]ou are not supposed to make contact with a superior officer."

Multari himself made contact with a superior officer when he grabbed Bugge. This was done to deescalate a situation and he was trying to remove Bugge from a situation that could have gotten out of hand. Multari was acting in the interest of protecting everybody. When asked if he grabbed Bugge because Respondent might have actually tried to harm Bugge when he made contact with him, Multari answered, "Maybe." Had the two men merely bumped each other by accident, Multari would not have grabbed Bugge.

During redirect examination, Multari agreed that the contact between the two men would not have occurred if Bugge had not move towards Respondent. He heard Bugge tell Devine, "Tommy, get his gun." He never heard Bugge tell Respondent, "[D]raw and present your firearm." Multari did not know if Respondent tried to get up in response to

Bugge leaning in towards him. He did not see Respondent get up before Bugge leaned in and initiated the contact. While Multari was moving Bugge away from Respondent, Bugge was yelling and screaming.

During recross-examination, Multari said "maybe two" seconds elapsed between Bugge leaning in and checking Respondent's right and left sides for his holster, and Respondent attempting to get up.

During questioning by the Court, Multari stated that he did not see, from where he was standing, Respondent swing at or punch Bugge, nor did he hear Bugge say that Respondent hit him. When Multari grabbed Bugge and moved him away, he did not see if officers grabbed Respondent because his back was to him the whole time. The contact that occurred between the two men was caused by the actions of both; Bugge reaching in and Respondent attempting to stand.

In his experience with the Department, Multari has never seen a situation like this, where one officer was attempting to remove another officer's firearm, nor has he ever witnessed a supervisor request an officer to present his firearm to him, other than at gun inspections. Gun inspections are conducted at the range or at the command when the immediate supervisor inspects officers' guns for serial numbers. During gun inspections, the officer unsnaps his holster and takes the gun out with the muzzle pointed down and the finger off the trigger. The supervisor does not reach in to take the gun out of the officer's holster. After the serial number is verified, the officer returns the gun to his holster, where it is snapped in. He did not hear Respondent's gun being unsnapped by Bugge, nor did he see the gun come out at any point. At no point did he see Respondent swing at Bugge.

During further redirect examination, Multari explained that when an officer is injured, his firearm is removed from him by unbuckling his gun belt and taking the gun belt off of the injured officer; the gun is not taken out of the holster at that time. Most likely, an officer is supposed to remove a firearm to draw and present at the range or within a loading tube at the firearm safety station. After drawing the gun, the officer presents it to the supervisor in his non-shooting hand, with the muzzle down, to prevent accidental discharges. Depending on the circumstances, the firearm may be handed to the supervisor loaded. At other times, the officer is asked to unload the firearm first so that it is apparent that there is no magazine or round in the chamber of the gun.

During examination by the Court, when an officer is injured and his gun needs to be removed for safety reasons, Multari testified that either the entire gun belt is removed from the injured officer, or the gun is taken out and secured in a gun locker before the gun belt is taken off.

Respondent

Respondent is currently assigned to the Military and Extended Leave Desk. He was appointed to the Department in July 2002. After starting his career in the 43 Precinct, he was assigned to the 42 Precinct in March 2004, performing patrol on the midnight tour. On his evaluations, he was rated 4, 4.5, and 4 [out of 5] in 2004, 2005 and 2006. ~~He has a bachelor's degree in psychology from Columbia University and specialized in biomechanics in the Air Force. He was not at liberty to disclose what level of clearance he had in the Air Force.~~

In the summer of 2008, Respondent was reassigned to patrol on the day tour. He had a “[v]ery professional” relationship with Sedran and “wanted to impress him, to make him look good at all times.” Sedran rated him a 4 [out of 5] in 2008 and he did not have any problems or personality conflicts with him then. At some point, he noticed that Sedran was “under a lot of stress with Compstat and numbers” and Respondent, on behalf of his squad, told Sedran, “[J]ust tell us what you want, we will get it for you. Sedran did not appreciate this and from then on, there was “a little friction” between Respondent and Sedran.

Most of the problems started after Rodriguez came to the 42 Precinct in the summer of 2008. She was originally assigned to the 4 x 12 tour, but the officers on that tour refused to do any work for her so she was switched to the day tour in November 2008 and became Respondent’s squad sergeant.

Respondent and Rodriguez worked together twice. The first time they worked together, Rodriguez made comments that Respondent found offensive, specifically about the way she was talking about officers and yelling at them in front of civilians. When Rodriguez stated that the officers were going to respect her because she was a sergeant, Respondent told her that respect is earned. Rodriguez “got very offended” and they did not work together for a while.

Respondent testified that one day, he went in to work though he was very sick.
~~He requested to go out on patrol, figuring his partner could drive during the tour.~~
However, he was assigned to be Rodriguez’ driver. When he requested that she drive, she refused and told Sedran that Respondent refused to work with her that day. When he explained to Sedran that he had not refused to work, that he was on medication and could

not drive but would gladly be a recorder, he was put on a foot post. A minute later, Respondent saw Rodriguez drive off, with an officer as the recorder. Respondent reported this to Sedran, who did not seem to like that and seemed offended. After these two interactions, Respondent had no other negative interactions with Rodriguez.

Rodriguez evaluated Respondent's performance in 2008. He was called to the administrative lieutenant's office to sign the evaluation and was about to sign it when the lieutenant told him to read it. He could not believe what he read. He was rated 2.5 [out of 5] and that he did not know how to do paperwork; that he did not know how to get along with other officers, "[e]verything was just completely negative."

Respondent was told that he could not do anything about the comments, but he could do things about the overall score, so he asked Devine, who told him to do research and look in the Administrative Guide. According to the guide, "[Rodriguez] wasn't [his] supervisor long enough." It was an annual evaluation and should have reflected his total quarterly points, which he had 56 or 58 out of 64 points. He believed this correlated to a score of 4 or 4.5 [out of 5], not 2.5.

Rodriguez had never sat down with Respondent to explain why she rated him a particular way. He approached Rodriguez about the evaluation but she said she did not want to talk to him. He then went to Sedran, who said he did not want to talk to him, adding that he concurred with Rodriguez' assessment. Respondent then contacted his attorney, who referred him to the Patrolmen's Benevolent Association (PBA). In June or July 2009, he spoke to Bugge about the evaluation. He had a professional relationship with Bugge and never had an altercation with him at that time. Bugge told Respondent, "I believe everything my supervisors say, you know, so what can you do for me?...if you

get me three felonies by the end of the month, and if you write me five C summonses by the end of the month, I will think about doing an interim [evaluation].”

Respondent wanted to go along with Bugge’s directive but, since January or February 2009, he had been assigned to a fixed post every day, by himself, “in one location in a residential area with no parking meters, no commercial parking, nothing.” A standing order came from Sedran that Respondent was to be on that fixed post every day. His assignment deviated only when Sedran was not in or if Respondent swapped assignments with an officer going to a detail outside the precinct. That officer would not cover the fixed post, but would be assigned to a “car post.”

Respondent believed he was being assigned to these fixed posts “to make a statement, to show the other officers that there are ways of modifying behavior.” He said it was pointed out at several roll calls that, “[I]f you don’t get your summonses, you are going to have the punishment post like [Respondent].” He was also told a few times that he was “the poster child for what’s going to happen if you don’t do what we tell you to do.” These statements were made by, primarily, Rodriguez and Sedran. Initially, Sedran told Respondent he was assigned to a fixed post because Sedran wanted him to “write more summonses, give us more activity.” Respondent told Sedran that if he saw a violation, he would issue a ticket.

Sedran had mentioned at Roll Call and to Respondent the number of summonses expected from officers which was 20. If summonses for certain offenses were what supervisors wanted and an officer wrote more of those, then the officer was “treated better” and “rewarded.” He said arrests “never got too much praise” because that meant the officer was in the stationhouse for four or five hours and not on patrol.

In August 2009, Respondent prepared a PBA Grievance Form and submitted it to his union delegate. Then, one day, he passed by Bugge's office and stepped in. Bugge, cursing, said that he (Bugge) could not believe that Respondent wrote a grievance on him, even after their pact for Respondent to write some summonses and Bugge "would take care of it." Respondent was told to "Shut the fuck up, and get the fuck out." Also, in August 2009, Respondent notified the Office of Equal Employment Opportunity (EEO) about the conditions he was working under, but nothing came of that. After he spoke to Bugge, Respondent continued to be assigned to "the two worst foot posts" everyday: Post 5, and Freeman Street and Lyman Place.

Respondent's military leave was also cancelled. He had an offer to go back into the Air Force "in a really nice position" as a reservist. He submitted the paperwork, but was told by the administrative lieutenant that the paperwork was "going to sit on [Bugge's] desk and it's never going to move." A couple of months later, Respondent found out that Bugge had approved another officer's military reservist application. As a result, Respondent lost a career path he had in the Air Force and up to today has not gotten his two military days.

Respondent testified that one day Bugge visited Respondent on his post and Respondent asked Bugge if he could help get him off the post, saying that he was trying to get activity and summonses to make that happen. Bugge smiled and said that he had no authority over that; that was up to Sedran. When Respondent spoke to Sedran, he said it was up to Bugge. There was no way for Respondent to get off the two posts by doing anything he could do because he was "not going to just write for writing. [He was] not

going to just arrest for arresting. There has to be something, and they just didn't seem to understand that."

Respondent also recalled an incident with Bugge that occurred in late August 2009. Officers were being sought to go to a United States General Assembly detail and he was handed a notification for the next day. When he hesitated to sign the notification because he wanted to consult with the roll call personnel first to see if he could "work out a better time" as he had two children at home, Rodriguez signed his name to the form, ran into Bugge's office and said Respondent was refusing to sign the notification. Upon his return from the roll call office, Respondent was called into Bugge's office, in the presence of several supervisors, including Sedran. Bugge cursed at Respondent, saying how dare he not sign the notification and not to ever do that again. Bugge did not allow Respondent to explain and told him he was dismissed from his office. As Respondent departed, Bugge called him "a faggot pussy mother fucker." He had no other interaction with Bugge or any other supervisor until the instant incident.

On January 11, 2010, Respondent was assigned to Post 5, the fixed and punishment post. Everyday, he walked a mile and a half to the post, in all types of weather. On that day, it was very cold, "like 13 degrees." He took a personal break at 10:45 a.m. after calling the desk and speaking to Rodriguez, who granted him permission. He went to the EMS station across the street, took off multiple layers of clothing and "did [his] business." When he emerged from the EMS station, he was right across the street from his post and could see everything. He saw Sedran drive up in a marked car, with Plata-Martin beside him. He heard Sedran call for him on the police radio, so he waved to Sedran and advised Sedran of his location. The time was 11:17 a.m.

Sedran told Respondent he was going to issue him a CD for taking an extended personal. Respondent told Sedran, “[T]here is no such thing as an extended personal. It's personal necessity.” Sedran signed Respondent's Activity Log, got out of the car and walked a few paces with Respondent. Then, Sedran said, “[W]hy are you doing everything you can to stay on this post?” When Respondent asked him what he meant, Sedran said he needed to write more summonses and do more vertical patrols. Respondent told Sedran that it was against regulations for him to perform verticals alone. Sedran also stated that Respondent should conduct car stops on foot. Respondent informed Sedran that conducting car stops on foot was very dangerous as he cannot physically stop a car with his body. Additionally, conducting car stops alone was contrary to any training he has received. Sedran was upset with Respondent's assertions that he could not do verticals or car stops alone.

When Sedran asked Respondent what he thought of him, Respondent told him, “I don't think you are the best supervisor. I think that there are other supervisors that could do the job better than you.” Sedran replied, “[O]kay, if that's how you feel,” and Respondent said it was. Sedran then said, “[O]kay, we're done,” added that he was going back to the precinct, got in his car and left. Respondent did not recall saying anything to Sedran or having a conversation with him while Sedran was seated in the car, beside Sedran saying that he did not want to talk anymore and that Respondent was getting a CD.

Respondent was “a little shaken up” by the exchange with Sedran. His union delegate, Palestro, called him and told him he was going to get a CD for taking an extended personal and was going to be put on the midnight tour. Rodriguez had assigned

Respondent a 2:00 p.m. meal, but because his relief arrived late, Respondent was not able to eat. He headed to the precinct and called EEO to report this "last straw... things just weren't making sense. Answers being given just made no sense to [him]." He was waiting outside the stationhouse for EEO to return his call when Palestro called him in. Palestro was holding the CD in his hand and he encouraged Respondent to "just sign it." Respondent refused, saying he was not going to accept a CD for something that did not exist. Palestro left, then returned, and said that "they got rid of the CD." Respondent believed "they" was either Bugge or Sedran, though it was the latter who wrote the CD.

Respondent was called into Bugge's office, and in the presence of Hofmann, Sedran and Devine, Bugge informed him he was being reassigned to the first platoon effective immediately due to him having the second lowest activity in the precinct. Respondent tried to explain that he was unable to get activity at the posts where he was sent every day, but Bugge told him, [S]hut your fucking mouth, don't you say a fucking word." Respondent left the office and did not believe any of the supervisors in the office with him reported Bugge's conduct to anyone.

Palestro suggested to Respondent that they go upstairs, so they ascended the 18 steps to the top. Palestro was ahead of him at the top step and Respondent was a step or two from the top step when, unexpectedly, Respondent fell backwards down the 18 steps, head over heels, stopping only when his head hit the concrete wall. He blacked out and did not know how long he was unconscious. ~~He did not know if his fall was caused by~~ Palestro stopping in front of him or if it was from not eating.

Respondent knew he hit the wall with his head because he had a huge bump on his head, his neck was hurting, Multari told him he saw his head hit the wall, and he

[Respondent] saw that the wall bore a hole in it where the concrete broke from his head hitting it. The first voice he heard was Multari's saying, "[G]et a bus, I think he's dead. Get a bus." He did not recall being moved or touched. Neither Rodriguez nor Sedran spoke to him and he never saw Sedran there.

As Respondent lay on the ground, he heard Bugge's voice "like thunder" yelling, "[T]hat mother fucker fell down the steps." He recalled being told not to move but felt he had to move. He did not know how he got to the steps, if he crawled there, but he got there because he did not want to be seen lying down on the ground. He remembered sitting, and people passing by and stopping.

Bugge came over and was asking, "[W]ho saw him fall, who saw him fall?" Palestro answered that he saw the whole thing, while Multari replied that he saw Respondent hit his head on the wall. Bugge then addressed Respondent, asking him why he did not go back to his post or why he went upstairs. Respondent mentioned that he really did not feel well, then just fell back again and everything "start[ed] to go black again."

The next thing Respondent recalled, he was lying on his back against the steps and he was "out." He knew he was alive but he could not move. He felt "this pressure" on him, heavy hand on him and what felt like a knee on him. He felt a pain in his back and neck. He did not know what was going on. He felt a hand going up and down his right side; ~~someone was going for his gun, but he was not worried because his gun was~~ on his left side. Then he felt the hands come across to his left side, going for his gun again. He moved his body and got struck on the right side of his head "like a freight train." He woke up and opened his eyes.

Bugge was in front of him, still trying to pull the gun from Respondent. His body could not move and he did not know what was going on. The next thing he knew, he was standing up and Bugge was "attached" to him. Then he saw Devine had Bugge in a headlock and someone else had Bugge in a bear hug and Bugge was being pulled away. Respondent testified that he did not recall getting up or whether Bugge was grabbing him. They were so close that when he opened his eyes, Respondent saw Bugge in front of him and Bugge's body could have been on Respondent. He did not see him with his eyes open doing it, but when he opened his eyes, Bugge was there.

When Respondent felt the hands all over his body, he did not hear anyone speaking to him or asking for his firearm. He recalled being up, but did not recall how he got up. He remembered someone came behind him and pulled off his jacket and took possession of his shield. Lopez "did something" where he pulled Respondent's gun out of the holster and Lopez shouted, "I got it, I have it." Respondent just stood there, wondering what just happened to him. This took place in the vicinity of the steps, maybe two steps from where he was sitting, across from the radio room or right across from the TS.

Respondent did not know where Bugge was at the time. He recalled Devine with Bugge in an arm bar, pulling Bugge off, but he did not hear Bugge saying anything because he "couldn't hear anything. [His] hearing was gone." No one asked him if he was injured. Lopez did not ask him if he was injured, whether he needed an ambulance, nor did he tell Respondent to sit down. After Lopez took the jacket, the shield, and the gun, he disappeared. Respondent put up his hands, stated, "He just hit me," and walked into the muster room as the officers around him parted. Nobody touched him, came up to

him, said anything to him, or did anything. He sat down on a bench and passed out until EMS came.

EMS told Respondent that his blood pressure was almost over 300 and that the bump on his head was bad. They took him to the hospital where tests were performed. Respondent still felt sick but wanted to go home. He was transported back to the precinct in a patrol car with a supervisor and his operator and no conversation took place between them. At the precinct, he was put in a holding area where he was not allowed to talk to anybody or to use his phone and he was told not to move from that spot, so he did not. The PBA Bronx trustee told him that everybody else was being interviewed. At about 11:15 p.m., Respondent was called into an office. A chief there started telling him things and Respondent was "spinning." The chief told him, "[Y]ou don't look well. I don't think you can give testimony." The chief then told him he was suspended. He believed the duty captain was present but he did not know who he was. He could not recall if Hofmann was there.

Respondent received a call from EEO the following day and informed them of what happened. After an investigation, he received a letter from EEO saying that nothing could be done for him. He did not contact the Internal Affairs Bureau (IAB). His girlfriend contacted the Civilian Complaint Review Board (CCRB), but the case was dropped when he told them that it was not he, but his girlfriend, who had lodged the complaint.

Sedran prepared the Line of Duty Injury Report for Respondent on the night of his fall. While Sedran asked him what had occurred, Respondent believed that Sedran did not conduct an investigation into the accident because Sedran had prepared the form and

given him a copy on the same day. He took the copy with him to the Medical Division the next day and it was entered in the computer, too. It was approved.

The Department initially paid for the medical expenses related to Respondent's fall. This included the initial hospital visit, the CAT scan, and several visits to his personal doctor and a chiropractor. The Department covered five months of medical care but stopped paying Respondent's bills after June 2010. Respondent "did a little investigative work" and discovered that the chief surgeon deemed his injuries were not sustained on the job, that they were due to the assault, and therefore the Department stopped paying for his medical expenses.

During cross-examination, Respondent agreed that he had a professional relationship with Sedran, who would point out to Respondent, on occasion, that he needed to bring up his activity. Respondent started having issues with "management" at the 42 Precinct in November 2008, but it "started boiling" in August 2009. He had been covering fixed posts almost everyday starting in January 2009. By August, he had tried asking to be taken off the fixed posts, as he came in to work and did his job, but to no avail.

Respondent was assigned to a sector car "maybe" one tour out of 20, and this occurred when he had to cover for an officer who was sick, late, or who had made an arrest. If he was assigned to CRV, between January 2009 and January 2010, it was because an officer swapped with him to avoid the extended CRV hours.

Prior to being assigned to the fixed punishment posts, Respondent's activity was better. He was assigned to a patrol car, responded to various jobs, and had opportunities to observe violations and issue summonses. This was in contrast to the fixed posts,

where he was "just surveying a one block area." At Post 5, the area is residential and there are no parking meters. There is one hour of street cleaning. When he was there, "there was no activity." He did not do any verticals unless he had another officer with him. He gave no summonses for littering or double parking. He once observed a man throw a soda can and warned the man he would be issued a summons if he did not pick up the can; the man picked it up. There were no double parked cars.

On January 11, 2010, he met Sedran across the street from Post 5. He was at McKinley Square Park, having come out of the EMS station, and crossing the street to the park. He could see his post, which was a half block away. He saw Sedran's RMP and tried to get Sedran's attention by waving. He then made a transmission on the police radio to alert Sedran, who then came over to his location. Respondent started his personal at 10:43 a.m. and ended it at 11:17 a.m., the time Sedran provided him.

Sedran told Respondent he had taken too long a personal and that he was going to be issued a CD. Respondent told Sedran he was a bad boss. After they spoke about doing verticals and car stops, Sedran said he was going to give Respondent a CD. "Not happy," Respondent asked Sedran if that [issuing the CD] was the best he could do. Sedran's voice was raised when he said he was issuing Respondent a CD, but Respondent did not raise his voice. Respondent would not characterize his conversation with Sedran as arguing; it was bickering. They were bickering as they walked back to the RMP and ~~Sedran to Respondent, "[M]ove away, go away, it's finished, it's done, I have nothing more to say."~~ Once Sedran said the conversation was over, if Respondent had anything more to say to Sedran, it was not going to be said there. He did not recall if Sedran asked

him to move away from the RMP more than once. Respondent denied that at that point he was questioning Sedran's competence as a supervisor and challenging his authority.

Respondent agreed that an officer has to treat a superior with respect, and if he had any grievances about supervisors doing something he disagreed with, he needed to go through proper channels. He did not make any grievances regarding the CD on January 11, 2010. Respondent did not know if Sedran gave him a CD because Sedran did not care for him. He believed he was repeatedly assigned to Post 5 as an example to other officers to show them what would happen if they did not write enough summonses, and this was pointed out at roll call several times.

The 42 Precinct "management" had every right to put him on a fixed post, and Respondent never complained about being on a foot post. He complained about getting a CD for an extended personal.

Respondent admitted that, as of January 11, 2010, his activity in terms of summonses was low. However, he stopped many [people], answered radio runs, interacted with the community, answered questions, kept surveillance on the neighborhood and assisted many officials while on his post. Respondent averred, "So I kept a very, very, very busy day doing many, many, many wonderful things for the Police Department in that location."

Respondent's grievance was focused on his evaluation. He said that, according to the Administrative Guide, the annual evaluation was supposed to be based on the quarterly points and "the overall picture." An evaluation rating of 5 or 2.5 has to be written by the commander. "A 2.5 can't be written by a supervisor who has known you for two months, especially when it goes against four outstanding quarters." In his

grievance, Respondent pointed out the discrepancies of the quarterly points and Rodriguez not having been his supervisor long enough, and he asked for an apology. He found out a couple of months ago that he won the grievance. Respondent agreed that he was categorized as chronic sick during that time.

After Sedran told Respondent he was going to get a CD for taking an extended personal, Respondent was subsequently called to Bugge's office. Bugge did not really listen to what Respondent had to say and changed Respondent's tour to midnights without any say from Respondent. He believed Sedran's issuance of the CD was unfair. However, he did not believe that Bugge's changing of his platoon was unfair because, "[t]our changes are tour changes. It's a part of life."

Upon leaving Bugge's office, Respondent went upstairs with Palestro. He had not been directed to go back to his post. He was not upset that his platoon had been changed; although it was not entirely fair, he accepted it.

After falling down the stairs, Respondent hit his head and was not entirely sure what happened afterwards. He knew he was on the floor, there were people around him, he heard Bugge's voice and he wanted to get up because he did not want Bugge to see him on the floor. Once he heard Bugge's voice, he got up and sat on the steps. He heard Bugge say, in general, "[W]ho saw him fall down the steps," and Palestro answered that he did. Some time after, Respondent heard Bugge inquire why he had not gone to his post, why he had not gone outside or leave. Respondent answered that he had just got assigned to midnights, that he was going to go upstairs, that his head hurt and he was not feeling well. That was when he started to feel like his world was collapsing on itself.

As Respondent was seated on the steps, with his back against three steel steps, he was "unconscious, or sort of." He could not open his eyes or see and he felt a weight and pressure upon him. He felt he was being "frisked" and "manhandled," and felt someone running their hands over his body, squeezing him. He was aware he was in a police station, surrounded by members of the service. After he was frisked on the left side, someone hit him on his face. It felt like a freight train hitting him and he woke up. Respondent did not see who actually hit him, but when he opened his eyes, Bugge was there. Respondent believed Bugge had grabbed onto him, so when officers pulled Bugge, Bugge pulled him, causing him to rise. He did not know if he was defending himself after Bugge hit him.

Respondent knew he was standing up when Bugge was pulled away. No one touched him or said anything to him. Someone removed his jacket, shield and gun and left him standing there. He walked into the muster room himself to await the ambulance. Nobody had to restrain him or take him to the muster room.

Respondent could not move at the time Bugge was reaching for his gun. He was not asked to hand over his firearm; if he were, he would have complied. When asked if it was possible that he was asked and he was not aware of it, Respondent replied, "Anything is possible." Although he did not actually see who had hit him in the face, Respondent believed someone was taking his firearm from him. He denied grabbing

Bugge and choking him because he thought Bugge was taking his firearm from him.

Respondent did not recall grabbing Bugge between the time he was hit and the time he rose with Bugge. He denied choking Bugge. After he got hit in the face, Respondent was not able to control his body. He tried to move but could not. Everything

was in slow motion. At the time, he was aware that he was on the steps, on his back. He recounted:

I was not about to let someone I don't know take my gun from me, no...I don't know who this person was, but someone was going through my body, my possessions. And at the end, when they tried to take my gun, that's when I moved. That's when I reacted.

I didn't move when they were touching me and going on the other side because I was trying to move, I was trying to get up, but I couldn't. Until they went for my gun, and the only thing I was able to do was shift my body, and the Inspector punched me in the right side of my face.

Well, the unknown person that was in front of me punched me in my face.

Though Respondent was aware that he was injured when he was sitting on the stairs, and that he was going to go to the hospital at some point, surrendering or safeguarding his weapon prior to going to the hospital "wasn't the first thing on [his] mind." He was not aware that the removal of his weapon was going to happen and as far as he was concerned, he was going to ride in the ambulance with his weapon at his side.

Respondent was taken to the emergency room, where the doctors told him he had a serious head injury, severe hematoma, swelling and back and neck injuries. He asked to be discharged and returned to the command.

On redirect examination, Respondent said he had a locker at the 42 Precinct and his gun could have been secured in his locker as opposed to it being taken from his person. He did not file a grievance about the CD. Rather, he challenged whether Sedran could issue him a CD and had his union delegate call the Office of Labor Relations. It was confirmed that "there is no regulation on time limits for personals, and the CD

disappeared." As far as he knew, this was a way to formally challenge the issuance of a CD.

Respondent did not know how he got from being laid out on the floor by the wall to being on the stairs. He may have crawled or someone may have pulled him there, but he had not stood up. He did not want to be seen prostrate by Bugge. He did not want Bugge "bellowing" at him while he was laid out on the floor. He just wanted to be seated and able to relay, "I'm fine, leave me alone."

During recross-examination, Respondent reiterated that he did not want to be seen lying on the ground with Bugge cursing at him, standing over him. His only goal was to get up and he did not know how he managed to do it, but it was "very difficult." He was in a lot of pain and his limbs were not responding. He just did not want to be seen lying on the ground by Bugge.

During examination by the Court, Respondent said that he believed there was a standing order for him to be on a fixed post based on Sedran stating to him, "You are never going to have another post. You are going to have this post every day." He worked the two punishment posts alone the majority of the time. He did not know for certain that other people worked those posts, but guessed people were assigned there on days when he was not present or assigned there. When other officers were assigned to those posts, they were assigned partners and cars. Respondent never complained and went to the posts alone. He believed he got a car twice and the sergeant who allowed him to take the car got in trouble for that.

Respondent documented in his Activity Log where his post was, who he was assigned with, and any incidents that happened. The Line of Duty Injury Report was prepared when he returned from the hospital. He spent three hours in the hospital.

After Respondent fell down the stairs and he was not fully conscious or did not open his eyes, no supervisor asked him if he was all right. He remembered Multari being there almost immediately after Respondent hit the wall, asking if he was okay, calling for an ambulance for an officer down, and saying, “[O]h, my God, He is dead.” Of Multari, Respondent said, “He was very, very, very, a very good gentleman. He took care of me.”

FINDINGS AND ANALYSIS

Specification No. 1

Respondent stands charged herein with wrongfully engaging in conduct prejudicial to the good order efficiency and discipline of the Department, to wit: said Police Officer did engage in a physical altercation with New York City Police Department Deputy Inspector Timothy Bugge.

Evidence adduced at trial with respect to this charge was established through the testimony of Respondent’s witness, Multari. Multari testified that he was preparing for the start of his tour on January 11, 2010 around 3:00 p.m. when he heard what sounded like a locker being thrown down the steps in the station house. He then looked in his peripheral vision toward the steps and saw Respondent fall at least down the last few steps very quickly and he heard a distinct sound of Respondent’s skull hit the concrete wall near the property room. Multari ran over to Respondent who was unconscious with

his eyes closed. About five seconds later Respondent awakened and started blinking without talking. He recalled that Devine and Bugge came over. He did not recall them asking what happened and neither asked Respondent about his condition. Multari stated that he called for an ambulance.

Multari said he heard Bugge ask if Respondent fell down the stairs and then he told Devine that he wanted Respondent's gun. Multari said at no point did Bugge ask Respondent to draw and present his gun. Bugge attempted to remove Respondent's firearm by going to his person. He began on the right side, but Respondent was left-handed. He then went to the left side where Respondent's gun was positioned. According to Multari, it was at that point that Respondent began to rise up, not to the point of standing, but he and Bugge knocked chests. Multari testified before this Court that it was at this point that he grabbed Bugge in a bear hug and pulled him away to prevent a physical confrontation from erupting. He testified that Bugge initiated the physical contact with Respondent; that Bugge was almost in the lap of Respondent while trying to retrieve Respondent's firearm and Respondent was not moving toward Bugge.

Multari also testified that he could not see what Respondent did with his hands from his position as he bear hugged Bugge and pulled him away. There was also no conversation between them.

To support this allegation against Respondent, the Department called Lieutenant Mark Sedran. Sedran testified that when he saw Respondent, he was at the bottom of the stair case. He testified that he asked Respondent what happened, but he did not receive a response. Polestro told him that Respondent fell down the stairs. There was no investigation of this information by Sedran at this time. There was no Line Of Duty

Injury Report prepared at that time. There was no interview to ascertain what happened to Respondent. There was no interview of witnesses at that time. Sedran did not check to see if Respondent sustained any injuries. He did not investigate to see if Respondent's cognitive skills were intact. Sedran did not call for an ambulance for Respondent although he believed someone had done so. Although he saw Respondent seated at the bottom of the stairs and was non responsive, he did not see any bleeding and he concluded that this fall was possibly staged because Respondent had just been reassigned to midnights shortly before the incident.

Although Sedran testified that he saw EMS arrive, he stated that he did not speak to EMS or to Respondent after that. In essence, Sedran never ascertained whether Respondent sustained any real injuries that were treated by EMS and that could have affected his cognitive abilities. Sedran further stated that he conducted an investigation after Respondent left for the hospital. Although Sedran did not witness the incident between Bugge and Respondent, he said Bugge came back to the office and said that Respondent grabbed him around the neck and Sedran saw that Bugge was red around the collar.

The Commanding Officer of the 42 Precinct, Inspector Timothy Bugge learned that Respondent had allegedly fallen down the stairs in the station house and was complaining that his head hurt and he felt dizzy. Bugge told Devine that he wanted Respondent's firearm. Bugge testified that he said to Respondent twice words to the effect, "Tony, give me your firearm," and Respondent did nothing and just stared. Bugge then attempted to retrieve Respondent's firearm. He reached to the right side of Respondent's body and realized Respondent was left-handed. He reached to the left side

and Respondent jumped up and grabbed Bugge around his collar with both hands. Multari intervened, bear hugged Bugge and moved him away. Other officers moved Respondent to the muster room. Bugge said Respondent yelled, "Get your hands off of me."

Bugge denied punching or hitting Respondent or doing anything to provoke Respondent. Bugge, although learning that Respondent fell down the stairs, also failed to either conduct his own investigation or direct someone to do one. He never testified that he asked Respondent how he was doing. His only concern seemed to be to remove Respondent's firearm, but not in a safe manner. There was no attempt, if the concern was for Respondent's and every else's safety, to remove Respondent's gun belt from his person to avoid an accidental discharge and to secure the firearm in that manner. Bugge's only observation of Respondent was that he did not see a bump on his head, but he acknowledged that he heard Respondent say at some point when he questioned him that his head hurt and he felt dizzy.

The Department also called Lieutenant Thomas Devine, the command's Integrity Control Officer (ICO). Devine testified that he observed Multari near Respondent. He said that Respondent was still on the floor, unconscious with his eyes closed. When Devine was questioned by the Court as to whether he checked Respondent's condition to see if he was breathing, he responded, "No." He acknowledged that he failed to conduct any investigation into the Respondent's alleged fall despite being the ICO of the command.

With respect to what happened next, Devine stated that eventually Respondent was seated on the steps inside the command near the front desk, but he was not talking.

Bugge walked over to Respondent and felt his right side, but did not find a holster. He then went to Respondent's left side and Respondent lunged at Bugge. He described Respondent jumping up "like the incredible Hulk" and lunge at Bugge. It must be noted that Devine never testified that Bugge first asked Respondent to "draw and present" his firearm or that Bugge attempted to remove the firearm by first removing the Respondent's gun belt. He simply walked over to Respondent and attempted to remove his firearm from his holster from the front and when Bugge touched the side of his body where the gun was secured, Respondent reacted.

The Department called Sergeant Larry Lopez. Lopez testified that sometime around 2:50 p.m., he heard a loud bang and commotion. When he went to the place of the commotion, he observed Polestra slapping Respondent in the face to wake him up. Respondent was lying on the floor. His head was facing the stairs. Lopez testified that he saw a red mark on Respondent's face, but he could not recall where. This is at least the third supervisor who approached Respondent who rendered no aid whatsoever to him. Lopez testified that he left the area and informed Bugge that Respondent fell down the stairs. Eventually Lopez returned to the area and was able to retrieve Respondent's firearm.

Ironically, no one seemed to observe Bugge's actions in this incident. Rodriguez testified that she was by the desk area and although she observed officers holding back Bugge and Respondent, she did not see what Bugge did but she did see Respondent lunge at Bugge. Devine and Lopez also described seeing Respondent lunge at Bugge.

Respondent testified that he returned to the command on the incident date and was advised by Bugge that he would be assigned to the first platoon effective

immediately due to the fact that he had the second lowest activity in the precinct. Respondent left Bugge's office and was with Palestro who suggested that they go upstairs. They proceeded up the 18 stairs when Respondent unexpectedly fell backwards down the steps. He hit his head on the concrete wall and blacked out, but he did not know for how long.

Respondent said he lay with his back against the steps and was "out." He explained that he was alive but he could not move. He felt hands moving up and down his body. The hands went on his right side and then he felt as if the hands were moving toward his firearm as they went to his left side. Respondent said he never heard anyone ask for his firearm. Respondent said he moved his body and was struck on the right side of his head. He opened his eyes. He saw Bugge right in front of him trying to remove his firearm. He began to stand and described being "attached" to Bugge. The next thing he knew, Devine had Bugge in a headlock, someone else had Bugge in a bear hug and he was being pulled away.

Based on the accounts by those who observed Respondent fall down the stairs in the station house, Respondent fell down quickly and hit his head on a concrete wall. There was commotion down the stairs where Respondent ended up. Bugge recalled hearing Respondent say his head hurt and he felt dizzy. Lopez saw blood. Respondent said he had a lump on his head and both he and Multari said he blacked out. Palestro was seen slapping Respondent at one point to wake him up. It is also evident that Respondent sustained some type of trauma to his head and to allege that he simply lunged at Bugge for no reason when not one supervisor in a command full of them even considered that Respondent may have sustained some head trauma from the fall down the stairs is

without merit. Only Respondent and Multari, who came to his aid and called for an ambulance, stated that Respondent rose up as Bugge tried to remove Respondent's firearm from his person. Even with head trauma, it may be an instinctive response for a police officer to resist someone trying to remove his firearm forcefully.

Accordingly, I find Respondent Not Guilty of engaging in a physical altercation with Bugge.

Specification No. 2

Said Police Officer Anthony Minoia, while on-duty and assigned to the 42nd Precinct, on or about January 11, 2010, after having been directed by New York City Police Department Deputy Inspector Timothy Bugge, Tax No. 893880, to surrender his firearm, did fail and neglect to comply with said directive.

As stated above, following a fall down a flight of stairs in the command where Respondent was still in a prone position, Bugge testified that he said to Respondent, "Tony, give me your firearm," and Respondent did not respond and only stared at him. Bugge later said that he believed Respondent heard him because they had been communicating prior to the request when Respondent said his head hurt and he felt dizzy. For Bugge to give a directive at this time without first establishing whether Respondent was capable of following commands defies logic. Seeing to it that Respondent first received medical attention should have been the priority. Similarly, Bugge never directed Respondent to "draw and present" his firearm which may have been understood even by the injured police officer.

Accordingly, it is recommended that Respondent be found Not Guilty of failing to comply with an order to surrender his firearm.

Specification No. 3

Said Police Officer Anthony Minoia, while on-duty and assigned to the 42nd Precinct, on or about January 11, 2010, was discourteous to on-duty New York City Police Department Lieutenant Mark Sedran, Tax No. 892061, to wit: after Lieutenant Sedran approached said Police Officer to address the fact that he was observed exiting the EMS station located on Boston Road and East 169th Street, Bronx County, said Police Officer did become belligerent, argumentative and insult said Lieutenant.

Sedran testified that on January 11, 2010, he drove a patrol car to Respondent's fixed post. He observed Respondent exiting the EMS station a block from Respondent's fixed post. Sedran said he told Respondent that he exceeded his allotted time for a personal. He also told Respondent that he needed to change his ways if he wanted to get off of the foot post. Sedran said that Respondent replied that he [Sedran] was a "poor and "horrible" supervisor. When Sedran informed Respondent that he may be going to midnights, Respondent's response was, "Is that the best you can do?" These verbal remarks to Sedran by his subordinate, Respondent, amounts to courtesy.

Respondent said that when Sedran told him that he would receive a CD for taking an extended personal, he told Sedran, "I don't see why you are going to give me a CD for this, but if that's what you want to do, do it." Respondent stated during his testimony that Sedran asked him what he thought of him and he said in response to Sedran, "I don't think you are the best supervisor. I think that there are other supervisors that could do the

job better than you. And he [Sedran] said, okay if that's how you feel. I said, yeah, that's how I feel." Sedran said, "[O]kay, we're done." Respondent retorted, "[A]ll right, we're done, you are just ending it like this? There is nothing more you want to say? You came here to talk to me, and you're not telling me anything." Respondent's exchange with his lieutenant was insulting and did amount to being discourteous to a superior officer.

It is noted that Plata-Martin testified that Respondent and Sedran had a conversation outside and away from the RMP that she was sitting in and could not hear the conversation.

Accordingly, I find Respondent Guilty of Specification No. 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of being discourteous to a Police Department lieutenant. It is noted that Respondent and Sedran had this conversation away from the RMP where a subordinate was sitting and who did not hear the substance of the conversation.

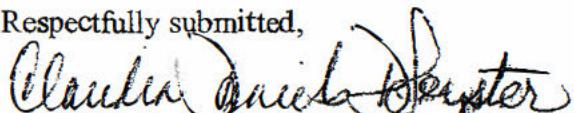
The Assistant Department Advocate asked for a penalty of termination. However Respondent was found Not Guilty of engaging in a physical altercation and failing to comply with a directive to surrender his firearm given that these two events occurred

immediately after he fell down a flight of stairs in the station house and hit his head in front of police officer witnesses.

In Disciplinary Case No. 79478/03, signed October 26, 2004, a six-year member of the Department with no prior disciplinary record forfeited ten vacation days for being discourteous to a supervisor. In that matter, Respondent had a disagreement with a sergeant. When the sergeant told him to go to the captain's office and bring a delegate with him, Respondent replied in anger, "Then you get a delegate too." In Disciplinary Case No. 77247/01, signed October 7, 2002, a member also forfeited ten vacation days for being discourteous to a supervisor while working a detail.

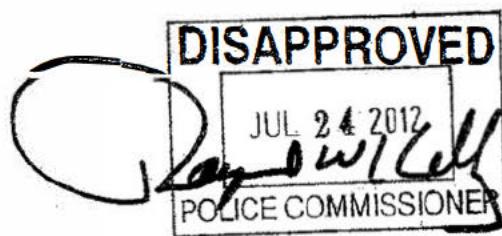
However, based on Respondent's overall service record, I recommend that he forfeit 25 vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster

Assistant Deputy Commissioner-Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ANTHONY MINOIA
TAX REGISTRY NO. 930743
DISCIPLINARY CASE NO. 86092/10

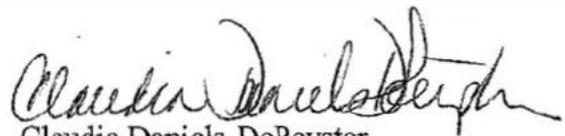
In 2007, Respondent received an overall rating of 3.5 “Above Competent” on his annual performance evaluation. In 2008 and 2009, he received a rating of 2.5 “Low/Competent.” Respondent has received no medals in his career to date.

In over nine years of service, [REDACTED]
[REDACTED]
[REDACTED]

In 2008 and 2009, Respondent received Negative Annual Performance Evaluations for being low in performance areas and behavioral dimensions. On March 5, 2009, Respondent was placed in Level I Performance Monitoring based on his negative Performance Evaluations. On April 8, 2010, he was placed in Level II Discipline Monitoring based on his overall performance. On May 4, 2010, Respondent was placed in Level 3 Special Monitoring due to poor performance.

Respondent has no prior formal disciplinary record.

For your consideration.



Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials